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SUPREME COURT, U.S.

Supreme Court of the United States

October Term, 1951

3

JOHN KEDROFF and BENJAMIN FEDCHENKOFF,
as Archbishop, etc.,

Appellants,

v.

SAINT NICHOLAS CATHEDRAL OF THE RUSSIAN ORTHODOX CHURCH IN NORTH AMERICA,

Appellee.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK.

BRIEF FOR APPELLEE.

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Supreme Court of the United States

October Term, 1951

No. 44

JOHN KEDROFF and BENJAMIN FEDCHENKOFF, as Archbishop, etc.,

Appellants,

v.

SAINT NICHOLAS CATHEDRAL OF THE RUSSIAN ORTHODOX CHURCH IN NORTH AMERICA,

Appellee.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK.

BRIEF FOR APPELLEE.

[Emphasis in quoted matter, unless otherwise indicated, has been supplied]

Introductory.

The importance to the national interest of the general principle involved on this appeal transcends the particular situation before the Court.

The rising tide of immigration from Eastern Europe and the Near East brought here increasingly large numbers of Christians of the Eastern Confession, as well as those spiritually subject to the Pope but using the Eastern rite, commonly known as uniates. Before the Bolshevik Revolution most of these people, including many of the uniates, put themselves under the Russian church adminis-

tration (see *Hanna* v. *Melick*, 1923, 223 Mich. 100, 105). This was natural, since the Russian mission or diocese in North America had continuously existed since 1793 (R. 7) and the Czarist government was a source of financial support (223 Mich. 105).

With the Bolshevik attack on religion, the picture here completely changed. The funds from Russia were cut off. The St. Petersburg synod was succeeded by the Moscow patriarchate, but that office was soon suppressed by the Bolsheviks in favor of a schismatic sect whose emissary attempted to seize control of all of the properties in the North American diocese (*infra*, pp. 14, 17). Litigation was prolific throughout the diocese. As a result various nationalist groups withdrew from the diocese and became connected either with national churches abroad e.g. Serbian, Romanian, Bulgarian, Albanian, or with ancient Eastern sees e.g. Greeks, Ukrainians and Carpatho-Russians with Constantinople, Syrians with Antioch, or set up independent organizations (Ukranian).

The Russian diocese, being cut off from its administrative centre in Russia, perforce became temporarily autonomous, as had been authorized by a decree of Patriarch Tikhon (*infra*, p. 14). For nine years there was no interference from Moscow with the autonomous body (which for convenience will be referred to as the *Russian Church in America*). Then appeared on the American scene a representative of the patriarchate (appellant Fedchenkoff) *demanding that the clergy here pledge loyalty to the Soviet regime* (*infra*, p. 35). When they refused, the patriarchate broke off spiritual ties with the autonomous body and set up its own diocese (*infra*, p. 37). *The policy of demanding loyalty continues to the present day* (R. 125).

This means that criticism of the Soviet government is forbidden, even to the lay people (R. 228). The patriarchate itself, however, is voluble in publishing Soviet propaganda against the United States (Appendix C, *infra*, p. 118). Under these circumstances administrative connection between the *Russian Church in America* and the mother church is unacceptable to these freedom loving citizens of the United States and Canada.

The pattern of history is apparently being repeated in the case of other groups of Eastern Christians in America. The *Romanians* have broken off administrative ties with the patriarchate in Bucharest (Cleveland News, July 16, 1951). The *Bulgarian* parishes here have declared their independence of the Soviet dominated synod in Sofia (Macedonian Tribune, Indianapolis, Aug. 18, 1949). The *Albanian* parishes have declared their administrative independence of the autocephalous Church of Albania (statement of Bishop Fan S. Noli, Boston, Oct. 18, 1951). The *Syrian* parishes have protested to the Patriarch of Antioch against his alleged attacks, reported from Moscow, on the foreign policy of the United States (N. Y. Times, Aug. 26, 1951). The *Armenians* (theoretically an heretical sect but close in faith and worship to the orthodox East) are in open revolt against their Soviet controlled catholicos (N. Y. Times, November 26, 1951).

The *Greeks*, on the other hand, being subject to that distinguished churchman and former United States citizen, Athenagoras, Archbishop of Constantinople and Ecumenical Patriarch, are at present immune from Soviet interference, as also are the *Serbs* for obvious reasons.

The time is ripe for bringing together into one administrative organization all American Christians of the East

who refuse to be controlled by the Kremlin. The project has the blessing of the Ecumenical Patriarch*. The young people are especially enthusiastic for the idea of an American church, using English in its worship, and sufficiently strong, in numbers** and material resources, to take its place with the great denominations in this country*** (Proceedings of annual conventions of Federated Russian Orthodox Clubs as reported in the Russian Orthodox Journal).

An American Church of the Eastern Confession, safe from Soviet interference and secure in its temporalities, would not only contribute a great heritage to the religious culture of America—in spirituality, faith, dogma, worship, liturgy and general ethos—but would be a beacon to the multitudes of Eastern Christians now under the Soviet yoke. The Voice of America and Radio Free Europe could proudly inform the oppressed populations that in America there exists an autocephalous branch of their own confession free from all governmental control, at home or from

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* This statement is based on personal knowledge derived from official conferences in which the writer has participated.

** Eastern church statistics are misleading since only heads of families are registered as members and many worshippers attend only once or twice a year and do not become dues-paying members. It is the writer's belief that an American Church of the Eastern Confession, as envisaged in the text, would have a total attendance, at least on solemn holy days, of about 1,500,000 persons.

*** The American Church of the Eastern Confession envisaged in the text would naturally become a member of the National Council of Churches of Christ in the United States, of which four Eastern churches, including the *Russian Church in America*, are now members and a fifth, the Greek, is expected to become a member at the next meeting of the General Assembly in December, 1952. The first four were members of the Federal Council of Churches of Christ in America. (See footnote on pp. 1-2 of brief of Federal Council as *amicus* in support of petition granted in *Sweatt* v. *Painter*, 338 U. S. 865.)

abroad, and at liberty to criticize any government including its own. Such a bond of sympathy between the Christian populations behind the Iron Curtain and their fellow believers here would, it is submitted, be the equivalent of many billions of dollars in military preparedness.

But these hopes would be dashed if it were held that the hierarchs of the mother churches—although known to be mouthpieces of the Kremlin, openly agitating against the United States, yet exacting loyalty to their Soviet masters from the American clergy and laity—were forever to be in control of the temporalities here, because of a supposed constitutional restraint based on the American tradition of religious liberty and the principle of separation of church and state! The great body of the faithful would not tolerate an attachment so colored with political propaganda and oppression. They would prefer to forsake their accustomed places of worship, if to enjoy them cost so high a price. They would be tempted to lose all church affiliation.

This would be a national misfortune.

It may well be that the outcome hangs on the decision of the present appeal.

Opinions Below.

The opinions in the Court of Appeals are reported at 302 N. Y. 1. The opinions in the Appellate Division are reported at 276 App. Div. 309. The opinion at Trial Term is reported at 192 Misc. 327.

Jurisdiction.

The jurisdiction of this Court was invoked by appellants under 28 U. S. C. §1257 and also, in the case of certain non-appealable issues, under §2103.

Statement.

[For the convenience of the Court a chronological table has been prepared and appears as Appendix A, *infra*, p. 111]

The judgment appealed from directs judgment for the plaintiff (appellee here) in an action in ejectment relating to certain real property located at 13-15 East 97th Street, New York City (which will be referred to as the Cathedral). The action was commenced on April 9, 1945.

Parties.

Appellee is a New York religious corporation,* incorporated by special act (Pl. Ex. 1: L. 1925, c. 463, printed R. 169, offered R. 6) for the purpose of

> "acquiring, maintaining and management of a cathedral church and its appurtenances in the city of New York as a central place of worship of the Russian Orthodox Church in North America, in accordance with the doctrine, discipline and worship of the Holy Apostolic Catholic Church of Eastern Confession as taught by the holy scriptures, holy tradition, seven oecumenical councils and holy fathers of that church; together with the residence of the ruling archbishop of the Russian Orthodox Church in North America, and such incidental cathedral foundations, schools, faculties and other religious, charitable and educa-

* "A 'religious corporation' is a corporation created for religious purposes" (Religious Corporations Law §2).

tional work as may be properly connected therewith in and for the said Russian Orthodox Church in North America" (R. 169-170).

Appellee has had title to the Cathedral since April 17, 1925 (R. 204).

Appellant *John Kedroff* was occupying the Cathedral when the action was brought in 1945 against him as sole defendant. He was the surviving son of John Kedrovsky, agent of the schismatic Renovated sect, who in 1926 had ousted the lawful occupants of the Cathedral, licensees of appellee, by means of what is now recognized to have been a miscarriage of justice (R. 261-262). Appellant Kedroff, when sued by appellee, associated himself with the representatives of the Moscow patriarchate and admitted them to the premises (R. 138).

Appellant *Fedchenkoff (Metropolitan Benjamin)* occupied the Cathedral *for the first time* in 1945, when he was admitted by appellant Kedroff (R. 137-138). He did not intervene in this action until 1947.

Issues Raised by Pleadings.

Only the issues raised by the first and third affirmative defenses contained in Metropolitan Benjamin's amended answer (R. 2) are material on this appeal.

The first defense alleges in substance that Metropolitan Benjamin is entitled to possess the Cathedral by virtue of his appointment as archbishop of the diocese of North America and the Aleutian Islands of the Russian Orthodox Church, under the rules of said church; also that the Cathedral is held in trust for the accredited archbishop.

The third affirmative defense sets up the bar of limitations.

Statute Involved.

The statute upon which the decision appealed from is based is Article 5-C of the Religious Corporations Law of New York (L. 1945, c. 693, effective April 10, 1945). Shortly after the coming down of the decision at Trial Term holding that Article 5-C did not apply to appellee (192 Misc. 327), the legislature passed a bill amending Article 5-C (L. 1948, c. 711). As stated by Judge Conway the amendments "illustrate beyond cavil that the decision of that court [Trial Term]* did not correspond with the intent of the Legislature, which immediately interpreted and explained its prior enactment" (R. 278).

The material portions of Article 5-C, as amended, are given in Appendix B (*infra*, p. 115).

The decision below holds in effect that appellee** is a *Russian Orthodox church*, as that term is defined in §105 of Article 5-C, and that §107 requires its property to be administered subject to the governing bodies, and in accordance with the rules, of the *Russian Church in America* (R. 277).

Factual Background of Legislation.

In upholding the validity of Article 5-C, as applied to appellee, the Court of Appeals detailed "the circumstances which forced the North American church [*Russian Church in America*] to declare its temporary autonomy, and the process by which the Moscow Patriarchy has been subjugated by the Russian Government and used as its tool"

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* Judge Conway inadvertently referred to the trial court as Special Term.

** Actually, Judge Conway referred to the Cathedral, *i.e.* the property, as a "Russian Orthodox church" but the context shows that the mandate of §107 is directed to *corporations* and only through them to their *properties*.

(R. 281). The court held that these "facts must be deemed to have been found by and to have been within the actual knowledge of the Legislature when it decided to act in 1945 and 1948" (R. 281).

While Judge Conway's opinion contains a graphic recital of the facts, it may be helpful to the Court if a somewhat different treatment of the same subject is given here.

Eastern Confession.

The Holy Orthodox Catholic Apostolic Eastern Church (4 New Schaff-Herzog Encyc. of Religious Knowledge, 48), sometimes called the Eastern Confession or Greek or Orthodox Church, comprises a group of religious bodies, substantially* identical in faith, dogma, orders, liturgy and ritual, derived from Holy Scripture, the writings of the early fathers, the canons of the ecumenical councils and the practice of the early undivided Church (Fortescue: Orthodox Eastern Church, passim). In the spiritual sphere the highest authority in the Church is the decree of a council which meets sufficiently wide acceptance to be deemed ecumenical (16 Encyc. Brittan., 1951, p. 939). On the administrative plane, however, each of the branches is autocephalous i. e. administered by its own governing organ. An *autocephalous* branch may comprise an *autonomous* subbranch which governs itself but recognizes the head of the main branch as its own head, even if only in an extremely limited, almost exclusively symbolical, sense (R. 246).

Except for the Churches of Antioch, Alexandria, Jerusalem and Constantinople, dating back to the foundation of these ancient sees, and such minor bodies as the Churches of Mt. Sinai and Cyprus, *all of the existing branches came*

* The differences are less significant than those tolerated within a single branch of the Anglican communion.

into existence as the result of political conditions (Columbia Encyc., 1946, tit. Orthodox Eastern Church, p. 1314).

Church of Russia.

Converted to Christianity in 987, the Russians were for several centuries part of the Church of Constantinople, ruled by the Ecumenical Patriarch. Upon the loss of prestige by that patriarchate, arising from the fall of Constantinople to the Turks in 1453, the Russians ignored the right of the Ecumenical Patriarch to appoint their metropolitan and did not seek confirmation of the candidate chosen by their bishops (Casey: Religion in Russia, p. 7). The *de facto* autocephaly thus assumed by unilateral action was not made *de jure* until 1589 when the first Patriarch of Moscow and All Russia was recognized by the Ecumenical Patriarch (ibid. p. 9).

From about 1700 to 1917 the Russian Church was governed by the Most Sacred Governing Synod (Curtiss: Church and State in Russia, *passim*). Under the Kerensky regime, after many years of preparation under the Czar (Spinka: Church and Russian Revolution, Chap. II), a Great Sobor (convention) of the Russian Church was held in Moscow, which sought to democratize the administrative structure of the Church to some extent (Fedotoff: Russian Church Since Revolution, p. 14). The supreme authority was vested in the sobor, which was to be convoked at established intervals and be composed of bishops, other clergy and laymen (R. 18). The patriarchate was re-established and the patriarch placed at the head of the administration, in charge of the internal and external welfare of the Church. His name (instead of the Synod's) was to be proclaimed at divine services (R. 19).

The enactments of the first Great Sobor* also provided for the participation of other clergy and laymen with the bishop in the government of a diocese (R. 19). The diocesan convention (sobor) was defined as "a superior body with the assistance of which the diocesan bishop rules the diocese" (R. 20-21).

North American Mission or Diocese Before 1924.

At the Great Sobor of 1917-1918 Tikhon was chosen as patriarch. He had been ruling bishop of the North American diocese at an earlier period (R. 16).

Beginning with missionary activity in Alaska in 1793, the Russian Church has had a continuous existence on the North American continent. The seat of the ruling bishop was moved from Sitka to San Francisco in 1870 (R. 11) and to New York City in 1905 (R. 8).

In 1916 there were 343 parishes under the jurisdiction of the Russian archbishop, but this number decreased with the withdrawal of various nationalist groups after the Bolshevik Revolution (16 Encyc. Brittan., 1951, p. 941 C-D; see *Hanna* v. *Melick*, 223 Mich. 100).

Suppression of Patriarchate by Bolsheviks: Schism of the Renovated.

Patriarch Tikhon soon came into conflict with the atheist masters of Russia who never hid their desire to exterminate religion as an opiate of the people and confiscated the whole Church property. Thousands of priests were executed, not only on pretext of political crimes but simply in revolutionary passion (R. 46-47).

* "[The Sobor] succeeded in giving the Russian Church a new and canonical constitution. The Sobor restored the Patriarchate, abolished by Peter the Great in 1721, affirmed the conciliar basis of the Russian Church and organized a rather democratic diocesan and parochial administration." Bolshakoff: Christian Church and Soviet State, p. 33.

Five years after the Revolution the Bolsheviks invented a new measure in the struggle with the Church, namely, the schism (R. 47). The government confiscated the church valuables; the people resisted; there were many arrests, trials and capital punishment; the Patriarch was imprisoned (R. 47-50).

This moment was used by a group of revolutionary priests for a coup within the Church; the government permitted them to talk with the Patriarch; he issued a letter authorizing them to deliver the central office files to a *locum tenens;* instead of doing so, they declared themselves the High Church Administration (R. 50). They tried to introduce uncanonical innovations, such as a married episcopacy (R. 51). In 1923, without authority from the Patriarch, they convened a sobor which purported to depose and unfrock the Patriarch, without a trial, abolish his office and establish a "Holy Synod" in supreme control of church affairs (R. 51-56). This was the origin of the Renovated Church, sometimes called the Living Church, the New Church or the Synodal Church (R. 41). Its members were mainly moved by terror and fear, the desire to escape the general persecution (R. 47). "There is evidence that they [the Renovators] were aided and abetted in their plan by the Russian Government which permitted them to proceed while killing, arresting or exiling those members of the church who objected" (R. 256-257).

At their 1923 sobor, the Renovators announced:

> "• • • All-Russian Local Sobor of the Orthodox Church testifies before the face of the Church and all mankind that at present the world has divided itself into two classes: capitalists-exploiters and proletariat, with whose labor and blood the capitalist world is building its welfare.

> In the whole [world] only the Soviet Government of Russia went into battle with that social evil. The Christians cannot be indifferent spectators of that battle. **The Sobor declares capitalism to be a mortal sin, and a battle with capitalism to be holy to Christians.** In Soviet Authorities the Sobor sees a world's leader for fraternity, equality and peace of nations. The Sobor stigmatizes the international and national counter-revolution and condemns it with all its religious and moral authority" (Pl. Ex. 6A, not printed: see record on appeal* in *Kedrovsky* v. *Rojdesvĕnsky*, 242 N. Y. 547, at fol. 1526).

The parties to this cause are in agreement that the Renovated Church was uncanonical (R. 163-164). It is extinct today (R. 164).**

Patriarch Tikhon was released from prison in June, 1923 (Timasheff, op. cit., p. 33),*** but confined in a monastery (R. 57). He branded the acts of the Renovators as invalid (R. 56). He died on March 8, 1925 (R. 57), having named as patriarchal *locum tenens* in order of succession three bishops, each of whom was arrested (R. 57). From 1922 to 1927 the central office of the Patriarchal (sometimes called Old or Tikhonite as distinguished from the Renovated) Church was suppressed by the government (R. 80; cf. Timasheff, op. cit., pp. 31-34).

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* Copies of this record will be furnished to the Court.

** For a more detailed account of the Renovated Schism than appears in the record, see McCullagh: Bolshevik Persecution of Christianity; Spinka: Church and Russian Revolution; Emhardt: Religion in Soviet Russia; Miliukov: Outline of Russian Culture, Part I; Timasheff: Religion in Soviet Russia; Anderson: People, Church and State in Modern Russia.

*** He had "signed on June 16, 1923, a most humiliating document, in which he not only repealed his former anathematizing of the Soviet but recognized himself guilty before it and requested his freedom, with repentance and promise of future loyalty." Bolshakoff, *op. cit.*, p. 37.

Patriarchal Ukase No. 362.

Two years before Tikhon's arrest the supreme church administration (patriarch, holy synod and supreme church council [R. 18]), had issued an ukase (decree) which provided, among other things, that in case the activity of the supreme church administration should stop and it was impossible for a diocesan bishop to establish contact with the bishops of the neighboring dioceses, he should himself assume full power and organize the diocesan administration with the assistance of the existing offices (convention, council, etc.) or newly organized ones; in case the situation should acquire a protracted or permanent character, the diocese should be divided into small dioceses and form itself into a district; all measures taken locally in accordance with the present instructions and all measures taken thereafter must be submitted for confirmation later to the central church authority when re-established (Pl. Ex. 5A: ukase No. 362, November 7-20, 1920, pr. R. 177, off. R. 44).

Titles to American Church Properties Jeopardized by John Kedrovsky.

In 1918 one John Kedrovsky commenced an action in the Supreme Court of New York on behalf of himself and other priests of the North American diocese against a corporation known as the Archbishop and Consistory which was a managing and advisory group handling the affairs of the diocese. He alleged that the lawful archbishop, Evdokim (Meschersky), had departed from the United States and that one Alexander (Nemolovsky) was usurping the office. He obtained the appointment of a receiver to whom the deeds of 135 church properties, standing in the name of Alexander, were delivered (see record on appeal in *Kedrovsky* v. *Russian Catholic Church*, 1928, 249 N. Y. 75, a copy of which will be furnished to the Court).

Appointment of Platon as Ruling Bishop.

Archbishop Platon (Rojdesvensky), who had ruled the diocese from 1907 to 1914, returned to this country in 1921. Prominent churchmen of the diocese urgently petitioned Patriarch Tikhon to reappoint him formally as ruling archbishop. In 1922 he received an oral, and in 1923 a written, appointment from Patriarch Tikhon.*

Purported Dismissal of Platon by both Patriarchal and Renovated Authorities.

Platon was openly critical of the Soviet regime (R. 223, 115, 116, 118, 122). In Bolshevik terminology this made him guilty of "acts of counter-revolution" (R. 57-58; see also Gsovski: Legal Status of the Church in Soviet Russia, 8 Fordham L. Rev. 1, 25-29), a situation which was embarrassing for both the schismatic and the canonical hierarchs in Moscow.

In 1923 the "Holy Synod" of the Renovated Church purported to excommunicate Platon (Pl. Ex. 18: extract from proceedings of Renovated synod, off. R. 155, not printed, see record in *Kedrovsky* v. *Rojdesvensky*, fols. 1668-1672) and to appoint in his place, as ruler of the diocese, the priest who had already succeeded in tying up in litigation titles to 135 of the church properties (*supra*, p. 14), John Kedrovsky. Although he was a married man, the Renovators went through the form of consecrating him a bishop and equipped him with impressive credentials as their representative in America and the ruler of the diocese (Pl. Ex. 18A: certificate of appointment and consecration,

* These circumstances are detailed in Judge Conway's opinion (R. 257-258) which is based partly on the record in *Kedrovsky* v. *Rojdesvensky*. Appellants' objections to the use of the earlier record are dealt with in the Argument (*infra*, p. 109).

off. R. 155, not printed, see record in *Kedrovsky v. Rojdestvensky*, fols. 1673-1674).

Not to be outdone by his Renovated rivals in stamping out the heresy of "counter-revolution", Patriarch Tikhon with his Holy Synod issued a decree dated January 16, 1924, reading as follows (R. 223-224):

> "As We have data proving that the Metropolitan of North America [Platon] has engaged in **public acts of Counter-Revolution directed against the Soviet power** and of disastrous consequences to the Orthodox Church,—Metropolitan Platon will be dismissed from the government of the North American Diocese from the day on which this Present Decision is announced to him. (2) The choice of a candidate for the North American Episcopal See will be the object of a special discussion. It will be his duty personally to announce this Decision to Metropolitan Platon and to take over from him all the Church property, governing the North American Diocese according to the special instruction which will be given him. (3) Metropolitan Platon will be invited to come to Moscow to put himself at the disposal of the Patriarch."

At the date of this decree Tikhon was confined in a monastery, seriously sick, with four doctors in attendance upon him and suffering heart attacks (R. 181).

The text of the decree, which by its terms was not to become effective until announcement to Platon by his successor personally (R. 223, 180), was published in the newspapers here shortly after its date (R. 180), although not until nine years later, in 1933, did it become operative by delivery to Platon (R. 113, 224).

Founding of Saint Nicholas: First a Parish Church, then a Cathedral.

In 1893 a parish started in New York "as brotherhood and a small group, asking to build a church and have regular services" (R. 8). They collected money, both here (R. 8, 13) and abroad. The Church in Russia and the Russian government contributed substantial sums (R. 13, 164). The priest in charge of the parish was named Hotovitsky (R. 13). In 1899 the Russian ambassador and consul general incorporated the parish under the Religious Corporations Law of 1895 with the name Russian Orthodox St. Nicholas' Church in New York (R. 232) For convenience the corporation will be referred to as St. Nicholas' Corporation.

In 1899 St. Nicholas' Corporation acquired the land, (R. 71) and in 1903 erected the buildings, which are the premises in suit. *They were acquired, built and consecrated as a parish church* (R. 8).* Later, the property (R. 8, 12) became the diocesan see (R. 8) and was called a cathedral, although the name of the corporation was not changed. The Cathedral was occupied by the ruling archbishops from 1905 to 1926 (R. 17, 23-24).

Platon Sued by Representative of Renovated Church.

On March 29, 1924, John Kedrovsky, alleging that he had been appointed archbishop of the diocese and that Platon had been suspended, brought suit in the state court of New York to restrain Platon and another (the dean) from occupying the Cathedral. This was the commencement of the suit of *Kedrovsky* v. *Rojdesvensky*, which was to have the extraordinary denouement below recounted

* "They started in 1903, and the church was consecrated in 1905, and was a parish church at that time" (R. 8).

(*infra*, p. 29). Litigation with the Renovated Church over other church properties also ensued (R. 181, 193).

***Russian Church in America* Created at Detroit Sobor of 1924.**

On April 2-4, 1924, a diocesan convention (sobor) was held at Detroit (Pl. Ex. 6: extracts from minutes, pr. R. 180, off. R. 44).

A report on behalf of the diocesan council was made by the dean of the Cathedral, Leonid Turkevich (now Metropolitan Leon~~ty~~). He related how Metropolitan Platon had been elected at a sobor held at Pittsburgh in 1922 and confirmed as head of the diocese by Patriarch Tikhon in 1923. He also referred to the decree of Patriarch Tikhon dismissing Metropolitan Platon which had been published in the local papers but suggested that this decree had been extracted from the Patriarch during a severe illness. He also referred to a statement of Evdokim Meschersky of the Renovated Church* which had been published in the press in regard to Metropolitan Platon. He said:

> "We all must know that we are threatened with the danger of losing Metropolitan Platon. In the meantime it is only he who can save our diocese. The merits of His Eminence the Metropolitan before the Russian American Church are recognized not only by our Mother Church of Russia but also by other denominations here in America.
>
> And so we have two documents before us concerning our American Church: one, a decree of the legal Church Authority, undoubtedly forced by the Soviet power, of Patriarch Tikhon regarding the recall of his Eminence the Metropolitan to Moscow, and the

* The same Evdokim who had been ruler of the diocese and left in 1917.

other, from the Moscow Synod of the 'Living Church', concerning the appointment as administrator of the Russian American Church of Mr. J. Kedrovsky calling himself Metropolitan.

In view of the fact that we are threatened with great danger in the American courts at the present time, and particularly if America should recognize the Soviet Government, the Metropolitan desires to hear the voice of his diocese; he wants to know how we look upon the future of our Orthodox Church here in America, and upon the threatening danger of losing our church properties, and upon the throwing of the yoke of Bolshevism on the future generation" (R. 180-181).

Another delegate, Mr. Greaves, who was later to attend to the legal affairs of appellee (R. 6, misprinted "Graves") said:

"* * * lately there have been outside lawsuits with the 'Living Church', which aspires, first, to seize the power over our Church in America and, secondly, to take our Church properties.

In such a situation it would be a great mistake to think that we can or must submit to the trend of circumstances, let our Metropolitan go and await a new bishop.

We have just heard the narration of the Very Rev. Leonid Turkevich as to how a bishop is being appointed here and how Metropolitan Platon is being recalled. If it is established beyond doubt that violence is being used on Patriarch Tikhon, that he is being forced to issue over his signature such acts as he could not issue under conditions of actual freedom, then we are not insured against all kinds of surprises, which could basically undermine that church order and peace which have with such great labor already been practically arranged by His Eminence the Metropolitan in the Church here, and would involve our Church here in a condition of that same anarchy

under the banner of which church life in Russia exists at present. This is why it is necessary, finally, to organize our church life here in America so that nothing from outside would threaten it. We must create our own firm Church Administration, completely insured against the possibility of the direct or indirect influence of the Soviet power" (R. 181-182).

* * * * * *

"There is only one way out of the situation that has arisen: we must exist independently. In the future no one can and must not either appoint or recall bishops, without the will to do so on the part of the Sobor of the American Orthodox Church. We ourselves establish church authority for ourselves" (R. 183).

The sobor was also addressed by Very Rev. Chepeleff, who characterized the Renovated Church as an heretical sect and suggested that Patriarch Tikhon was tolerated by the Soviet power only as a means of influencing opinion at home and abroad. He said.

"The Holy Sobor can judge itself how near to normal are those conditions of governmental existence under which the Patriarch has to realize his right of administration of the Russian Church.

In Russia at the present time there is no freedom of religion, more than that—at the present time in Russia there exists the most cruel and merciless persecution of any religion and of its representatives, while they have entirely enslaved the Orthodox Church and made her a servant of their political interests.

* * * I have in view that disquieting question which every one of us puts to himself: what would be the Most Holy Patriarch Tikhon's attitude if our American Church, in view of all that is now happening in Russia, should begin to live by herself,

pending the establishment of order in the life of the Russian Church" (184-185).

He then referred to the decree* of Patriarch Tikhon authorizing temporary local church administrations to be organized in case of a diocese being cut off from communication with the central church administration (*supra*, p. 14) and went on to say:

> "In this document what is substantially of importance to our Church in America is that we, actually, for a good many years now, as Mr. Greaves rightly said here, have been cut off from the highest organ of the administration of the Russian Church which is Patriarch Tikhon" (R. 185).

According to the minutes the "debate which followed showed the unanimous desire of the members of the Sobor to keep our American Church from Soviet interference" (R. 186).

> " 'There is no doubt,' said the Very Rev. Klopotovsky, 'that we all stand for the Patriarch. But, do you know that he would be thankful to us if we separated from him. By such an act we would relieve his heavy cross. Do not forget that soon we will have to pay the Receiver 5% of our church income. We will not be allowed to drive a nail into the wall of any of our churches without the permission of the Receiver. It has been said that the Patriarch is going to send us a bishop from Russia. We should know that no bishop will be permitted to leave Russia for abroad except a 'Living Church' one. Look at the example of the Japanese Church; it is long since autocephalous' " (R. 186).

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* The minutes report the speaker as using the date 1921 (R. 185) instead of 1920.

It was submitted to the Sobor that resolutions should be worked out disposing of the two basic problems facing "our church":

> "(1) To leave Metropolitan Platon as the head of our Church here,
>
> (2) To recognize ourselves as a self-governing Church" (R. 187).

At a later session a resolution was adopted:

> "To recognize that His Eminence Metropolitan Platon may be removed from the Diocese only in a legal manner and not otherwise than with the agreement of the flock that elected him" (R. 187).

The following resolutions were then adopted (R. 187-189):

> "POINT 1. Temporarily, until the convocation of the All Russian Sobor further indicated in Point 5, to declare the Russian Orthodox Diocese in America a self-governed Church so that it be governed by its own elected Archbishop by means of a Sobor of Bishops, a Council composed of those elected from the clergy and laity, and periodic Sobors of the entire American Church."
>
> "POINT 2. To ask filially the Most Reverend Metropolitan Platon to head the administration of the Church and to rule it first with the cooperation of the existing Council of Bishops and Diocesan Council and to elaborate in speedy order a plan for the permanent administration of the American Church for the future, which, in agreement with the foundations of Orthodoxy, must be organized upon the basis of elected Sobors.
>
> "NOTE: The term 'in speedy order' must be understood in the sense of a definite period of six months."

"Point 3. To filially ask the Most Reverend Metropolitan Platon together with all the bishops to approve this resolution and to inform all the Eastern Churches of the reorganization which has taken place."

"Point 4. **Not to break at all the spiritual ties and communion with the Russian Church,** but always to pray for her good, give her every cooperation and mention the Most Holy Patriarch as the head of the Russian Mother Church to which the American Church is obligated for her existence."

"Point 5. To leave the final regulation of questions arising from the relationship of the Russian and the American Churches to a future Sobor of the Russian Orthodox Church which will be legally convoked, legally elected, will sit with the participation of representatives of the American Church under conditions of political freedom, guaranteeing the fullness and authority of its decisions for the entire Church, and will be recognized by the entire Oecumenical Orthodox Church as a true Sobor of the Russian Orthodox Church.

"Point 6. For participation in the working out of a new constitution of the American Church, as well as for the elaboration and execution together with the Bishops of all acts and measures as shall be needed in the development of the reorganization of the American Church, to elect six delegates from the Sobor, of which 3 from the clergy and 3 from the laity, to whom shall be turned over all the questions indicated in the name of this Sobor, being guided by the resolutions of the All-Russian Church Sobor of 1917 and 1918.

"Point 7. To consider the present resolution effective until there shall take place an All-Russian Church Sobor, under the conditions indicated above in Point 5, guaranteeing its freedom and legality,

and at that Sobor final agreement shall be reached as to the fate of the American Church."

Although this action was taken in 1924, it appears that Platon did not publicly proclaim the administrative autonomy of the *Russian Church in America* until 1933 (R. 118, 242).

Cathedral Central See of *Russian Church in America*.

Just as the Cathedral had been the central see of the North American diocese so it was the central see of the *Russian Church in America* after the 1924 sobor. Metropolitan Platon and Dean Turkevich remained there (R. 64, 8-9).

Trial and Decision of *Kedrovsky* v. *Rojdesvensky* at Special Term.

The trial opened on October 27, 1924. Metropolitan Platon's counsel concentrated on attacking the canonicity of the Renovated Church and proving the oral and written appointments of Platon by Patriarch Tikhon. He made no attempt to base Platon's rights on the action of the Detroit sobor of 1924. In fact the resolutions of that sobor were excluded when first offered (Record in *Kedrovsky* v. *Rojdesvensky*, fols. 605-607) and later admitted only as bearing on "the sentiment of the diocese" (*ibid.*, fols. 1269-1270).

On December 24, 1924, Mr. Justice Ford ruled in favor of Platon. After quoting from the proceedings of the pseudo-sobor, he said:

> "* * * the Sobor's fulsome praise of the Soviet government and all that it had done and proposed to do and its unreserved pledge of loyalty to the dictatorship, remind one of a rabid, partisan, polit-

ical convention rather than of a supreme ecclesiastical care of eighty million souls.

• • • • • • •

There is a graver consideration in the attempt of this new church, a product of the Russian dictatorship, to obtain control of a country-wide religious organization in America with hundreds of clergymen and branches scattered all over nearly all the states and having upwards of a quarter of a million members. **The property used by the Russian Church totals in value an immense sum. If the Soviet authorities can gain control of all these, what a base for their revolutionary propaganda they will have secured.**

Reference to the 'Bulletin' of the proceedings of the Sobor of 1923 clearly shows its community of purpose with the Soviet dictatorship in the work of instigating revolution and destroying this and all other governments to make way for a universal 'dictatorship of the proletariat.' • • •

Much more might be quoted to show that this new church makes it obligatory upon all its members under pain of mortal sin to make the purposes of the Russian dictatorship their own. Those purposes are well known—no less than the subversion of this and all other governments on earth by bloody revolution. **To that end is its world wide propaganda maintained—all the more dangerous when insidiously carried on in the guise of religious doctrine by agents garbed in the reverential vestments of a great church.**

• • • the judiciary, oath bound to support the constitution, should not be behind the other departments of government in curbing the activities and the power for harm of the enemies of our democracy whenever, wherever or however they appear. Self preservation is the supreme law of governments as well as of individuals. Herr Most was twice con-

victed, once for an incendiary speech and again for inciting to violence through the printed page. He would not have been heard to urge in defense of his preachments that he was merely expounding his religious faith. Neither should these ecclesiastical propagandists of armed revolution be protected by similar pretenses. The criminal courts take cognizance of such offenses against orderly government, but the civil courts too should, I believe, wield their power to protect the state from the menace of insurrectionary propaganda on the high grounds of manifest public policy."

72 N. Y. L. J. 1211, Dec. 31, 1924; record in *Kedrovsky* v. *Rojdesvensky*, fols. 2005-2006, 2023-2024, 2034-2037.

Incorporation of Appellee and Transfer of Title to it by St. Nicholas' Corporation.

Shortly after the coming down of this opinion Metropolitan Platon and his advisers determined to apply to the New York legislature for a special act of incorporation for the Cathedral. In preparing the draft of the act Metropolitan Platon had the assistance of George Zabriskie, Esq., who also interested several Assemblymen and Senators in its passage (R. 171-172) and assisted in organizing the corporation.

The act (L. 1925, c. 463) became effective on April 8, 1925 (R. 169, 171).

The act named as incorporators Metropolitan Platon and nine other persons, including Valerian E. Greaves (R. 169), one of the active participants in the 1924 sobor (R. 181, 187). The act constituted the corporators as the first trustees and empowered the corporation to adopt a constitution (R. 170).

The objects and purposes of the corporation, as stated in the act, have already been given (*supra*, p. 6).

The act required that the ruling archbishop of the "Russian Orthodox Church in North America" exercising jurisdiction as such, for the time being, should always be ex-officio a member and trustee and the official head and presiding officer of the corporation (R. 170).

By §6 of the act St. Nicholas' Corporation was authorized "by its trustees or trustee for a nominal or other consideration to sell, convey, assign and transfer" to appellee any or all of the real and personal estate of St. Nicholas' Corporation.

On April 17, 1925, St. Nicholas' Corporation transferred the Cathedral, with all of the personal property of that corporation which was in the Cathedral, to appellee (Pl. Ex. 11: deed, pr. R. 204, off. R. 73).

On April 23, 1925, the incorporators and first trustees of appellee held a meeting on the Cathedral premises (Pl. Ex. 3: minutes, pr. R. 171). Metropolitan Platon presided and expressed his satisfaction that by the incorporation the Cathedral "will forever be preserved safe as a central place of worship of the whole Russian Orthodox Church in North America and seat of the Church Administration in this country" (R. 171). The act of incorporation was read and a copy was ordered to be prefixed to the minutes (R. 171-172). The conveyance by St. Nicholas' Corporation to appellee was noted (R. 172). A constitution was adopted the preamble of which recited that in the exercise of the powers vested in the trustees by the special act

> "and in full realization of our sacred duty to protect the interests of the Russian Orthodox Church, to preserve her unity, and secure forever her welfare in the country, we, the Trustees * * * do hereby set forth and ordain the following Constitution providing, however, that nothing therein shall be construed

as a surrender by the Board of Trustees of any part of the final authority and responsibility solemnly imposed upon them by the Charter for maintenance and management of the Cathedral and its appurtenances in accordance with the doctrine, discipline, and worship of the Holy Apostolic Catholic Church of Eastern Nations, as taught by the Holy Scriptures, Holy Tradition, the Seven Oecumenical Councils and Holy Fathers of that Church."

A committee was appointed to draft statutes which it was determined should provide (R. 174)

"that the Ruling Archbishop of the Russian Orthodox Church in North America who at this time is His Eminence, Metropolitan Platon, duly appointed to this office by His Holiness, the late Patriarch Tikhon, shall have the right to nominate the dean and other clergy and servants of the Cathedral; and use the Cathedral at his discretion for all Episcopal acts and for other religious, benevolent and educational purposes, and have the general and unrestricted direction of the religious services in the Cathedral, and to use the building known as the rectory adjoining the Cathedral as his personal residence, and that it shall be lawful for the Archbishop through the Dean of the Cathedral or any other person to be designated by him, to organize a parish at the Cathedral consisting of the Communicants worshipping at the Cathedral Church • • •".

No change occurred in the use of the premises by reason of the transfer of title from St. Nicholas' Corporation to appellee. The Cathedral continued to be used as the central place of worship of the *Russian Church in America*, as the headquarters of that body and the residence of the Metropolitan (R. 64-65).

Argument and Decision of *Kedrovsky* v. *Rojdesvensky* on Appeal.

In the Appellate Division, as well as in the Court of Appeals, Metropolitan Platon's counsel relied on the resolutions of the Detroit sobor only as confirming the fact of his previous appointment by the Patriarch (Respondents' brief* in Appellate Division, p. 15; appellants' brief* in Court of Appeals, p. 19). No attempt was made to base Platon's authority on his election as head of the administratively autonomous *Russian Church in America.*** In fact his counsel construed the Detroit resolutions as aimed only at the Renovated Church (Respondents' brief in Appellate Division, p. 56; appellants' brief in Court of Appeals, p. 64).

On November 27, 1925, the Appellate Division handed down an opinion (*per* McAvoy, J., Clarke, P.J., Dowling and Merrell, JJ., concurring) which reversed the decision at Special Term (214 App. Div. 483). The majority were impressed by the deposition on behalf of Kedrovsky made by one Dr. Hartman, a Methodist minister (now bishop) who had attended the 1923 pseudo-sobor (R. 97) and swore that it was convened by the Patriarch (214 App. Div. at p. 488). The majority were also impressed by Kedrovsky's written credentials from the Renovated "Holy Synod" (Pl. Ex. 18, not printed; see *Kedrovsky* v. *Rojdesvensky* record, fols. 1668-1674).

On the other hand Platon had been in no position to prove his case by evidence from Russia. The Russian government was then favoring the Renovated Church (*cf.*

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* Copies of these briefs will be furnished to the Court.

** Appellants' statement (brief, p. 8, n. 3) that Platon's "claim on the ground of local election was rejected" is misleading. The election was referred to only as showing recognition of his appointment.

Timasheef, op. cit., p. 33); Platon was *persona non grata* (R. 115, 119).

Today, now that the Renovated Schism has become an historical fact and it is established that the pseudo-sobor of 1923 was not convened by the Patriarch and Holy Synod and was not canonically valid (R. 163-164), the truth is found to have been expressed by Mr. (later Presiding) Justice Martin in his dissenting opinion (214 App. Div. at p. 490):

> "* * * He [Kedrovsky] is the servant of a group who have reached a position of power in their church organization through the revolution in Russia and by what appear to be questionable means. It is extraordinary that they should have the aid of a court of equity to displace those who are administering the trust strictly as it was intended to be administered."

The majority, however, found, "contrary to what is now conceded to be the fact" (R. 262), that the sobor of 1923 was valid and that the Renovated Church had power to appoint Kedrovsky ruler of the diocese. Judge Conway explains what then happened in the Court of Appeals as follows (R. 262):

> "* * * When the appeal from that decision reached us we treated it as one involving only questions of fact as to whether (1) there was a governing body of the church and whether (2) that governing body had recognized Kedrovsky as archbishop of the church. We determined that there was evidence to sustain the findings of the Appellate Division on both those points. We thereupon affirmed the judgment, one Associate Judge being recorded as absent. (*Kedrovsky* v. *Rojdesvensky* [1926], 242 N. Y. 547.) The control of all phases of Russian life by the Government was not as apparent in 1924 as it is a quarter of a century later and on the surface, at least, the case

appeared to be a proper one for the application of the rule that in an ecclesiastical dispute involving a denominational church, the decision of the highest church judicatories will be accepted as final and conclusive by the civil courts (*Trustees of Presbytery of N. Y.* v. *Westminster Presbyt. Church*, 222 N. Y. 305, 315; *Watson* v. *Jones*, 13 Wall. [U. S.], 679, 724-727; Religious Corporations Law, §§4, 5)."

The decision of the Court of Appeals came down on March 30, 1926.

A few days later Metropolitan Platon and Dean Turkevich left the premises (R. 9) and appellee has ever* since been excluded (R. 23-24).

Attempt by Appellee to Oust Kedrovsky and Injunction Against Appellee.

Shortly after the coming down of the decision of affirmance in *Kedrovsky* v. *Rojdesvensky*, appellee brought a forcible entry and detainer proceeding against Kedrovsky and another in the Municipal Court of the City of New York (R. 194).** Kedrovsky countered by bringing an action in the Supreme Court, New York County, against appellee and its trustees to enjoin them from occupying the Cathedral and from interfering with occupancy by Kedrovsky (R. 195). Although the signed order is missing from the court files it is clear from the surrounding circumstances that an injunction *pendente lite* against appellee was granted (Pl. Ex. 8: docket entries, pr. R. 204, off. R. 69-70; Pl. Ex. 7 ident.: counter order and notice of settle-

* Except for a few months prior to and during the trial pursuant to stipulation (R. 137) and without prejudice.

** Counsel did not know this fact when he made the concession appearing on page 160 of the record, lines 13-16. It was discovered during the investigation made after the trial in connection with the missing injunction order mentioned in the text.

ment, pr. R. 189, off. R. 250; Pl. Ex. 7-A ident.: memorandum on settlement, pr. R. 192, off. R. 250; Pl. Ex. 7-C ident.: affidavit, R. 193, off. R. 250),* as was suggested by the court (R. 79-80) and practically conceded by appellants (R. 249) at Trial Term. The injunction remained in force until Kedrovsky's death in 1934 since the action was never brought on for trial. The premiums on the injunction bond were regularly paid (R. 200).

Injunction Against Metropoltan Platon.

The final judgment in *Kedrovsky* v. *Rojdesvensky* restrained Metropolitan Platon and Dean Turkevich from occupying the Cathedral and from excluding John S. Kedrovsky, delegate of the Holy Synod and archbishop of the diocese, from the premises and from in any way preventing him from occupying the premises and from interfering in any way with the occupancy of the premises by him (Pl. Ex. 4: judgment, pr. R. 175, off. R. 9).

John Kedrovsky occupied the Cathedral until he died in 1934 (R. 9) but "was recognized by no one" (R. 265). His son, Nicholas Kedroff, was his alleged successor in office (R. 200) and occupied the premises after the father's death until his own death in 1944 (Jurisdictional Statement, p. 12), leaving in possession (R. 160) his younger brother, appellant John Kedroff, who claimed to be a priest of the Renovated Church (R. 138).

* The motion, made informally after the trial (R. 203), that Plaintiff's Exhibits 7 and 7-A for identification be received was not passed on by the Trial Term. After its opinion, which ignored the defense of limitations, was filed, the parties entered into a stipulation (R. 250) enabling the appellate courts to consider these exhibits and Plaintiff's Exhibit C for identification, in case the defense of limitations were to be passed on. The existence of the injunction order is relevant only as proof that the statute of limitations was tolled under Civil Practice Act §24.

Requirement of "Loyalty" to Soviet Regime.

In 1927 the Church in Russia (i. e. the Patriarchal, as distinguished from the Renovated) was permitted by the Soviet government to reopen its central office (R. 80). But the government would brook no renewal of the old conflict. This time the Church must be "loyal" (R. 80).

Patriarch Tikhon had died in 1925. The substitute *locum tenens* of the patriarchal throne in 1927 was Metropolitan Sergius, the three prior appointees in line of succession having been arrested and, presumably, sent to Siberia (R. 57, 107). On June 10, 1927, he issued a statement in which he affirmed in the name of the whole patriarchal hierarchy and flock, their "sincere readiness to be fully law-abiding citizens of the Soviet Union, loyal to its Government and definitely to hold ourselves aloof from all political parties or enterprises seeking to harm the Union" (Pl. Ex. 15-A: declaration, pr. R. 207, off. R. 85).

"Loyalty" to the Soviet government was required by Metropolitan Sergius from all of the clergy abroad (R. 113-114). By "loyalty" was meant refraining from criticism of the Soviet regime either in the pulpit or in the name of the Church (R. 113-115; 122-123). The pledge of "loyalty" from the clergy abroad was necessary because the Soviet government suspected the Church of disloyalty and the conduct of the Church abroad, including America, gave it reason to have suspicion about the conduct of the Church in Russia (R. 114-115). Metropolitan Platon was known in Russia as an opponent to the Soviet government and the whole number of facts about the American Church proved that there was an opposition to the Soviet government (R. 115).

Before Dean Turkevich was made a bishop Metropolitan Platon cabled Metropolitan Sergius asking him to bless the consecration. Sergius replied, demanding that Platon pub-

lish in the newspapers that he recognizes Sergius as the head of the Church and is not active in "politics" (R. 117) that is, publicly opposing the Soviet regime (R. 124-125). Metropolitan Platon refused to publish such a statement (R. 117). Later he issued a declaration in which he proclaimed the American diocese autonomous (R. 223-224), openly opposed the Soviet regime (R. 116 and accused the Church in Russia of becoming a slave of the godless government and aiding it in its fight against God (R. 122).

The policy of the central church authorities in Moscow to require an obligation of "loyalty" to the Soviet regime from the clergy abroad has continued to the present time (R. 125).

Church in Russia Becomes Congregational in Polity by Force of Soviet Decree.

In 1929 the government of the Soviet Republic of Russia (R. S. F. R. S.) issued the following ordinance (R. 58-59):

> "Resolutions and Orders of the religious conventions, conferences and their executive Bodies [organs] can be carried out only by way of voluntary execution by the faithful."
>
> Instruction of the People's Commissariat for the Interior of October 1, 1929, No. 328, §5; Gsovski: Legal Status of the Church in Soviet Russia, 8 Fordham L. Rev. 1, 9 n. 43.

This means that no group of worshippers (usually referred to as the Twenty, since 20 signatures are required for obtaining permission to use a building for religious purposes, Gsovski, op. cit., p. 12) in the Russian Republic need obey the commands of a superior body (R. 58; Gsovski, op. cit., pp. 8-9).

Action of Court of Appeals in *Kedrovsky* v. *Russian Catholic Church*.

The action which John Kedrovsky had brought in 1918 (*supra*, p. 14) reached the Court of Appeals in 1928. The judgment of Special Term, unanimously affirmed by the Appellate Division, directed that the deeds to 135 church properties be delivered to Kedrovsky. The appellants, including Metropolitan Platon, were granted leave to appeal by the Court of Appeals. As stated by Judge Conway (R. 263):

> "* * * Realizing that the legitimate claims of the North American Diocese [*Russian Church in America*], whose temporary autonomy had but recently been declared, were entitled to consideration under the circumstances disclosed, we unanimously reversed the judgments below. (*Kedrovsky* v. *Russian Catholic Church* [1928], 249 N. Y. 75)."

Interdict Against Platon and Appointment of Benjamin as Ruling Bishop.

In 1933 Metropolitan Benjamin came to the United States as the representative of the Patriarchal Church (R. 113). By ukase No. 29, dated March 22, 1933, the acting patriarchal *locum tenens* and his Holy Synod appointed Metropolitan Benjamin to the position of Patriarchal Exarch in America to investigate the affairs of the North American diocese and commissioned him to take over the government of the diocese upon the dismissal of Metropolitan Platon therefrom (R. 224).

In the name of the patriarchate Benjamin demanded from the American clergy a pledge of loyalty to the Soviet government, which they refused to give (R. 211). Then, by decision of August 16, 1933, No. 61, the acting patriarchal *locum tenens* and his Holy Synod declared the proclamation of the North American diocese as autonomous by Metropolitan

Platon in opposition to the will and without the consent of the Moscow patriarchate to be an act rudely violating church discipline "and as such to count it null and void and to revoke it", declared schismatic "the religious group organized around Metropolitan Platon" and the diocesan administration and other organizations existing or formed in the future in this group canonically illegal and all their decisions concerning the Orthodox churches and concerning parishes and in particular their ordaining and appointing bishops and other clergy and church officials illegal and invalid; also decreed that Metropolitan Platon, "as the initiator and chief author of the schism created" be summoned before the Court of Bishops and charged with violations of the ancient canons "and that meantime we place Metropolitan Platon under prohibition from performing divine services until either he repents or the ecclesiastical court shall have rendered a decision"; also proposed to the bishops, priests, church officials and laymen in the North American diocese "that they, breaking off from communion with those who entered into schism, should express to the Patriarchal Exarch (in America)—or directly to the Acting Locum Tenens [Sergius]—(in Moscow) their submission to this present decision and their determination and promise in future to remain in the canonical jurisdiction of the Moscow Patriarchate" (R. 224-225).

This unilateral and *ex parte* action, which broke off spiritual relationship between the mother and daughter churches, was taken with no advance notice, without the preferment of charges and without permitting an opportunity to the *Russian Church in America* to be heard (R. 211).

By decree No. 1005, dated June 29, 1934 (Def. Ex. C: ukase, pr. R. 223, off. R. 36), the acting patriarchal *locum tenens* and his Holy Synod appointed Metropolitan Benja-

min "permanent Ruling Bishop of the Russian North American Diocese with the title of Archbishop of the Aleutian Islands and North America, also reserving to him the status of Exarch of the Moscow Patriarchate in America" (R. 226). This ukase recited that the acting patriarchal *locum tenens* and his synod had heard the facts concerning the refusal of Metropolitan Platon to render canonical submission to the patriarchate, and the declaration of Platon proclaiming the diocese "autocephalous", and referred to the patriarchal ukase of January 16, 1924, dismissing Platon from the government of the North American diocese because of his "acts of counter-revolution directed against the Soviet power" and summoning Platon to Moscow (*supra*, p. 16). The ukase also referred to the decisions of March 22, 1933, and August 16, 1933, above mentioned. The ukase also referred to the verbal proposal of the acting *locum tenens* the opening words of which were stated as follows: "His Eminence, the Exarch in America, reports that he has organized in New York a Diocesan Council and that **our North American Diocese has begun official existence**" (R. 225). After these recitals the ukase decreed the appointment of Benjamin as above mentioned and confirmed the establishment by the exarch of a diocesan council.

Despite these decrees of the patriarchate and its attempt to set up its own diocesan organization in America, the American parishes remained loyal to Metropolitan Platon. Metropolitan Benjamin testified that 50 parishes recognized him as ruling bishop, but he failed to identify them although he promised to do so (R. 130) and there is ground to consider his claim exaggerated (cf. R. 215). *In any event there is no proof that a single one of his parishes was in existence at the time of the 1924 Sobor or at the time of his arrival in this country.* They may all have been founded since then.

Election of Theophilus; Interdict against Him; Adoption of Parish and Church Statutes.

A sobor was held at Cleveland on November 20-23, 1934, reaffirmed the autonomy of the *Russian Church in America*, elected Theophilus (Pashkovsky), then Bishop of Chicago, to be metropolitan and ruling bishop in place of Platon, who had died (R. 25), and adopted certain statutes for the administration of parishes known as the normal parish statutes (R. 76, 77).

In 1935 an interdict like that which had been placed upon Platon "for similar conduct" was issued against Theophilus by the patriarchate (R. 166).

At a sobor held at New York on October 5-8, 1937, the autonomy was again affirmed and statutes for the administration of the Church were adopted (R. 77).

Yonkers Case.

In 1940 the status of the *Russian Church in America* again came before the Court of Appeals on a motion for leave to appeal from the decision in *Waipa* v. *Kushwara*, 1940, 2d Dept., 259 App. Div. 843. In a suit brought to compel a priest to comply with an order of Metropolitan Theophilus transferring him from a church in Yonkers, N. Y. to another parish, he defended on the ground, among others, that Benjamin as appointee of the patriarchate, and not Theophilus, had authority here. The lower courts rejected this contention, finding authority for the creation of the *Russian Church in America* in the 1920 ukase of Patriarch Tikhon (Pl. Ex. 5-A) which was to continue "until such time as the existing civil authorities • • • would cease interfering with the church" (N. Y. L. J., Jan. 6, 1940, p. 97, col. 5). The Court of Appeals denied leave to appeal (283 N. Y. 780).

Failure of Negotiations with Patriarchate.

When Sergius, who had finally, in 1943, been permitted by the Soviet government to assume the office of Patriarch, died in 1944, the *Russian Church in America* sent a telegram of condolence to the patriarchal *locum tenens* which was courteously acknowledged on behalf of the Synod. Then the *Russian Church in America* was invited to send delegates to an All Russian Sobor to be held in Moscow in January, 1945. The delegates chosen by Metropolitan Theophilus were a bishop, two priests and a layman. The Soviet government visaed their passports and offered the use of a military plane from Alaska to Moscow. Later the visa on the layman's passport was cancelled and the military plane that was carrying the bishop and one of the priests put them down in the middle of Siberia. They had to take a train and arrived a week late for the Sobor, at which the present Patriarch, Alexy, had already been elected. They appeared before the Synod, rendered a full report in writing on the condition of the *Russian Church in America* and a written request for the lifting of the suspension on appropriate terms of autonomy (R. 213). A few days later, without having opportunity for discussion, they were handed an ukase by the Patriarch (R. 213).

The ukase (Def. Ex. D: ukase, pr. R. 227, off. R. 37-38) prescribed certain conditions for the lifting of the suspension, among which was the formation of a new district covering all of the American hemisphere, the convocation of an American sobor "consisting of all the bishops, representatives of the clergy and laymen of the **present exarchate headed by Metropolitan Benjamin as well as of the Metropolitan District headed by Metropolitan Theophilus**" (R. 227). The sobor was to elect a metropolitan, subject to confirmation by the patriarchate; as candidates the patriarchate recommended Metropolitan Benjamin and also the

archbishop who was being sent from Russia to preside over the sobor (R. 228). Although Metropolitan Benjamin had advised Patriarch Alexy just prior to his election that an essential condition of reunion between the Mother Church and the *Russian Church in America* was the fullest loyalty to the Soviet power but that he did not think that the *Russian Church in America* would accept that condition (R. 125), the ukase also stipulated that the sobor in the name of the *Russian Church in America* "declares its abstention from political activity against the USSR and gives corresponding orders to all parishes" (R. 228).

The patriarchal ukase was rejected by the Bishops' Council of the *Russian Church in America* at a meeting held in Chicago on May 22-24, 1945 (R. 209). The Metropolitan Council of the *Russian Church in America* later issued a statement explaining the rejection of the ukase (Pl. Ex. 16 - statement, pr. R. 209, off. R. 127).

After referring to the events leading up to the ukase and reciting its terms the statement continued:

> "First and foremost it must be emphasized that the [*Russian Church in America*] considers itself as part of the Russian Church and desires that the suspension be lifted. It appreciates the courtesies which were extended to its delegates in the traditional Orthodox spirit. It ascribes greater importance to such Christian attitude of mutual dealing than to the technicalities to be observed in the lifting of the suspension. On the other hand, the tone and text of the Patriarchal Ukase disclose that the advisers of the Patriarch and the Holy Synod have little conception of the conditions of church life in this country, and of the atmosphere of religious and political freedom in which the [*Russian Church in America*] has developed" (R. 214).

The statement then characterized the establishment of a new metropolitan district as pointless and obviously a

device for justifying a new election of a metropolitan. It also questioned the holding of a sobor under wartime conditions. It insisted that a sobor when convoked should be presided over by Metropolitan Theophilus.

As to the renunciation of political activities against the USSR, the statement said:

> "On October 10, 1944, the Council of Bishops of the [*Russian Church in America*] adopted the following resolution:
>
> 'The Council of Bishops finds it necessary to recommend to the clergy of the Metropolitanate, for the general welfare, not to touch upon political questions and not to make any public speeches on the subject, especially from the pulpit.'
>
> On the whole this recommendation has been meticulously followed. The [*Russian Church in America*] will hold to the same policy in the future. Nevertheless, the [*Russian Church in America*] exists in an atmosphere of religious and political freedom. **Every citizen of the United States and of Canada has the right of freedom of speech.** He may criticize his own government or any other government, so long as he does not go beyond certain limits which have been fixed by statute or decisions of the courts. It would be inconsistent with the duties and obligations of loyal American and Canadian citizens, and contrary to the traditional atmosphere of freedom of speech and political action in these countries, for the [*Russian Church in America*] to give the pledge of loyalty to a foreign power which is implicit in the demand of the Patriarchal Ukase" (R. 216).

As to the holding of an election of a metropolitan the Metropolitan Council saw no justification, there being no present vacancy in the office (R. 216-217).

The statement ended as follows:

> "The [*Russian Church in America*] has sympathized with its mother church in all of her trials and

tribulations. It has rejoiced in the privileges which have been recently accorded to her. But there must be further discussion and clarification of the relationship between the two churches. Why was the [*Russian Church in America*] invited to send representatives to the Sobor of January, 1945? Was it so that they might attend the Sobor? Then why was the visa of the lay representative cancelled and why were the two clerical representatives who made the trip not permitted to arrive in time for the Sobor? Why were those representatives not given an opportunity to discuss the conditions of the Ukase but merely handed the completed document for delivery to Metropolitan Theophilus? It was an arduous journey for them to make if their function was only that of couriers. The Ukase might more economically have been brought here by Exarch Benjamin, who went to Moscow and was present at the Sobor.

The substance of the Ukase, as well as its tone and all of the circumstances leading up to and surrounding the issuance of the Ukase, suggest the high-handed methods of an autocratic bureaucracy. The [*Russian Church in America*] is flourishing in the atmosphere of democratic freedom. It was no fault of the American branch of the Russian Orthodox Church that by force of circumstances it was compelled to establish its own church administration. It was no fault of the [*Russian Church in America*] that the Patriarchate laid a suspension on it because its clergy declined to give a pledge of loyalty to the Soviet power.

It is an American Church and an American Church it must continue to be" (R. 218-219).

In September, 1945, an archbishop, Alexis, came to the United States as an ambassador from Patriarch Alexy (R. 137). Appellant Kedroff, who had already been sued in this action (R. 67), requested and received reordination at

the hands of Metropolitan Benjamin and the patriarchal envoy and surrendered possession of the Cathedral to them (R. 138) in about October, 1945 (R. 137). The envoy stayed six months (R. 137) but apparently made no progress toward rapprochement with the *Russian Church in America*.

In November, 1946, a sobor of the *Russian Church in America* was held at Cleveland. By a vote of 187 to 61, the following resolution was adopted (Def. Ex. A: resolution, pr. R. 222, off. R. 30):

> "WHEREAS, the 7th All American Sobor of the Russian Orthodox Church of North America having assembled in Cleveland, Ohio, on November 26-28, 1946, and having thoroughly considered the relations of our Church in America with the Patriarchal Church of Moscow and all Russia, and affirming our complete faith and loyalty to His Eminence, our elected, Metropolitan Theophilus;
>
> NOW, THEREFORE BE IT RESOLVED, that His Beatitude Alexy, Patriarch of Moscow and All Russia be requested to continue us in his fold and be our Spiritual Head, conditioned upon the Church in America retaining its present autonomous status and the right of self government. That the periodic All American Sobors of the Russian Orthodox Church of North America shall remain the Supreme Legislative and Administrative body of our Church; at these Sobors the Church shall continue to elect its own Metropolitan, and make and adopt its own laws by which the Church in North America is, in all respects, governed;
>
> . . . . . .
>
> AND BE IT FURTHER RESOLVED that in the event that the aforesaid conditions are found not to be acceptable to His Beatitude, the Patriarch of Moscow and all Russia, the Russian Orthodox Church of North America shall continue, and does remain, self-governing until such time as the Patriarch of Moscow and all

Russia finds it possible to accept the conditions herein stated."

The substance of the resolution was cabled to the Patriarch (Pl. Ex. 17: cablegram, pr. R. 219, off. R. 131) and a reply, the translation of which follows, was received on January 25, 1947 (Pl. Ex. 17-A: cablegram, pr. R. 220, off. R. 131):

"Metropolitan Theophilus,
59 East 2nd Street, N. Y. C.

I have received your Eminence's telegram today stop I welcome decisions of Cleveland Sobor stop On principle I have no objections against autonomy for our Orthodox Church in America stop In peace-loving spirit I commission Metropolitan of Leningrad Gregory leaving for America in near future discuss all questions together with your Eminence stop God's blessing clergy and all flock stop From now on I consider your Eminence and all your clergy in unity of prayer with us celebrate service together with Metropolitan Benjamin in token of this communion stop Christ is with us and always will be stop

PATRIARCH ALEXY"

Metropolitan Gregory of Leningrad and Stalingrad, a permanent member of the Patriarchal Synod in Russia (R. 163), came to this country shortly before the trial with a view of negotiating with representatives of the *Russian Church in America* to see whether a basis of adjustment of their differences could be found (R. 131). Evidently he was unsuccessful as he appeared as a witness on behalf of appellants (R. 162) and testified that the *Russian Church in America* was still under suspension by decision of the Patriarch and his Synod (R. 166).

Use of Moscow Patriarchate as Instrument of Propaganda.

Although it is still the policy of the patriarchate to require the clergy outside of Russia to refrain from criticism of the Soviet regime (*supra*, p. 33) on the ground that clergymen should occupy themselves "with spiritual matters, and nothing more" (R. 125), the patriarchate follows a different rule for itself. An article in The New York Times of April 2, 1948, bearing a Paris dateline of the day before, stated:

> "A new campaign to stamp out religious influence in the Soviet Union is reported to be under way. This drive apparently is directed against minor and local clergy and not against **the top hierarchy of the Russian Orthodox Church, which is completely and officially in sympathy with the Communist Government.**
>
> It may appear paradoxical that village priests are not in complete accord with the subservient patriarchates [*sic*] under which they function. Nevertheless reports have been leaking out to the effect that more than one local priest has intimated to his parishioners disagreement with the hierarchy's attitude and has been menaced with state disapproval. * * *
>
> **The top of the Soviet orthodox hierarchy meanwhile has become so active in its open support of the Government that its official publications are now engaged in heated attacks on the Western powers and definitely mixing in lay politics.**
>
> **The last issue of the Journal of the Moscow Patriarchate to reach here contained a long diatribe against so-called United States and British 'war mongers' in an article entitled 'The Devilish Spirit of a New Aggression Threatening the People's Peace' * * *."**

Since the publication of the article above quoted, the patriarchate has engaged in a systematic campaign for "peace"—Soviet style. It has published a collection* of decisions, epistles, addresses, appeals, speeches and articles, under the title (in translation) "The Russian Orthodox Church in the Fight for Peace" (*infra*, p. 151). Many of these have appeared in its official monthly publication, the Journal of the Moscow Patriarchate*. Extracts (in translation) from articles in the Journal are given below (Appendix C, *infra*, p. 118).

The Metropolitan Nicholas of Krutitsk and Kolomen, who has evidently played a prominent part in the campaign for "peace", is the second ranking hierarch in the Church of Russia, as witnessed by the order of signatures on the address of the Patriarch and Synod to the Security Council of the United Nations (*infra*, pp. 128-129).

Summary of Argument.

I. As a basis for its determination that the accustomed beneficiaries should enjoy their traditional houses of worship under the administrative control of the governing authorities of the *Russian Church in America*, rather than that of the envoy of the Moscow patriarchate, the legislature is to be presumed to have acted reasonably in tracing and identifying the beneficiaries of religious trusts, in preventing a diversion of the trust properties and in deciding which trustees might be relied upon to carry out more effectively the purposes of the trusts.

The words "trusts" and "trustee" are not used in a technical sense, since a religious corporation holds full legal and beneficial ownership of the property acquired by it by unrestricted gift, but the state has an interest in seeing that the property is applied to the corporate purposes.

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* Copies may be found in the Library of Congress and in the library of the State Department.

The finding of the legislature that the *Russian Church in America* was identical in fact with the North American diocese, as it existed at the time of the Detroit sobor of 1924, was not contradicted by the evidence and should be accepted by this Court. On the basis of this finding it was reasonable for the legislature to determine that the members of the *Russian Church in America,* being the original beneficiaries of the properties dedicated to the use of the diocese prior to April 2-4, 1924, and having done nothing to forfeit their interest in the properties, were still the beneficiaries of those properties.

The members of the *Russian Church in America* are not schismatics or secessionists. They followed the instructions of Patriarch Tikhon (ukase No. 362 of 1920) in organizing an administratively autonomous district in 1924. Its polity is "sobornal", in the spirit of the enactments of the Great Sobor at Moscow in 1917-1918. The members of the diocese had no alternative in the face of the threatened seizure of their properties by the schismatic Kedrovsky and the threatened dismissal of Platon for his opposition to the Soviet regime.

The members of the *Russian Church in America* have likewise been justified in rejecting all demands of "loyalty" to the Soviet regime. There is no canonical basis for that demand. It contravenes the American tradition of free speech. If it were complied with, the churches would become centres of Soviet propaganda. The moral education of the children and young people would be affected.

The legislature is to be presumed to have found upon sufficient evidence that there would be a diversion from the original trust purposes if it were held that only those worshippers who accepted the administrative control of the Moscow patriarchate were entitled to enjoy the properties which were dedicated to the use of the diocese before April

2-4, 1924. The state has power, in the exercise of the cy près prerogative, to decree that the properties may be enjoyed by the original beneficiaries even although the administrative tie, which originally existed with central church authorities in Russia, has been broken.

The determination of the legislature that the governing authorities of the *Russian Church in America* are the trustees who may be relied upon to carry out more effectively and faithfully the purposes of the religious trusts created for the benefit of the diocese prior to April 2-4, 1924, is supported by sufficient evidence and is reasonable. The patriarchate is being utilized by the Soviet government as an instrument of propaganda. This is shown by the record, by facts of common knowledge and by the patriarchate's own official publications.

The patriarchate has been shorn of the power to administer even the church edifices located in Russia. By force of governmental decree, the Church in the Russian Soviet Republic is congregational in polity. No local congregation is subject to superior administrative control. If, therefore, the administrative control of the American properties by the patriarchate is based on rules having the force of contract, as pleaded in the amended answer (R. 3), the contract has been rendered impossible of performance on the part of the parties located in Russia who still comprise the most numerous part of the Russian Church. This is an added reason that the patriarchate is not the proper trustee.

II. Neither the grant of a charter to a religious corporation nor the regulation, within reasonable limits, by the state of the conditions upon which the corporate property is to be held and administered, violates the principle of the separation of Church and State.

Except for Virginia and West Virginia all of the states grant charters to religious corporations. This Court has intimated that the early legislators of Virginia were excessively rigid in this respect. New York, on the other hand, has been liberal in complying with the wishes of applicants for charters of religious corporations. The rule of denominational control, however, was not enforced in New York until 1875. This is a rule of state policy, which may be repealed or abrogated by the legislature, as it may deem in the public interest.

On the whole the rule of denominational control has worked well. But it does not fit all cases e.g. the unique situation presented by the justifiable break in administrative connection between the North American diocese and the patriarchate, the unjustifiable demands for "loyalty" to the Soviet regime and, finally, the utilization of the Moscow patriarchate as an instrument of Soviet propaganda. It was competent, therefore, for the legislature in the public interest to prescribe that the denominational control of the properties here should be exercised by the *Russian Church in America*. This was in effect an amendment of the corporate charters previously granted by the state, all of which were subject to the reserve power.

Even if it is held that the rule of denominational control is imbedded in the federal constitution a state may validly inquire into and pass on the competence under their own rules of the denominational organs attempting to exercise such control.

By laying down a rule in advance for the guidance of its citizens the legislature promoted public peace and order and discouraged litigation. The courts of New York had been plagued with lawsuits arising out of the situation of the Church of Russia. This is in itself a reasonable basis for the legislation. It would be an unreasonable hardship

to require the members of every *Russian Orthodox church* in New York (as that term is defined in §105 of the act), whenever an attempt was made to seize control of its property in the name of the patriarchate, to dig up and assemble the evidence required to convince a court that the patriarchate was not the proper administrator.

III. Religious liberty is promoted, not abridged, by the legislation.

If the Moscow patriarchate is held to be in perpetual control of the American church properties—beyond the reach of courts or legislatures—then truly the great body of worshippers in this country are hampered in the exercise of their religion: they will forfeit their shrines rather than bow their necks to Stalin. Conversely, if they are protected in the enjoyment of their accustomed places of worship, their freedom of religion is promoted.

Traditionally the administrative connection of Protestant religious bodies here with mother churches abroad has tended to be broken. The classic example is that of the Episcopal Church. It is unthinkable that its canonical dependence on the Church of England would have been enforced by American courts in case of a dispute over the control of properties here. The colonists were terrified at the thought of English bishops coming here before the Revolution. When Madison and Jefferson planned for religious liberty they were not thinking of protecting the canonical rights of the Bishop of London to exercise administrative control of the Episcopal churches in this country.

It is conceivable that even the Church of Rome in dire necessity might need legislation of this kind to protect its properties here in case of the seizure and drugging of the Pope by Soviet puppets.

IV. The religious freedom of Metropolitan Benjamin is not affected.

He came here in 1933. Not until twelve years later did he make a move to gain admittance to the Cathedral. The privilege of presiding there could not have meant so much to him.

The legislation leaves him free to worship or preside in any church or cathedral where he may be welcome. He is even free to *worship* in the Cathedral; but he may not *officiate* there unless permitted to do so by appellee or its licensees.

If the defeated party in every suit over the administration of property dedicated to religious uses were able to upset the judgment by raising the cry of religious liberty, it would be futile for the courts to entertain such suits.

V. The act does not "outlaw" or "suppress" the patriarchate in the state.

The compulsory mandate of the act applies only to religious corporations which fall within the definition of "Russian Orthodox church" contained in §105. A corporation organized as an independent unit, or founded since April 2-3, 1924, for the purpose of adhering to the patriarchal jurisdiction, is not affected by the mandate. There is no proof that any corporation affected by the act recognizes or is attempting to recognize Benjamin as ruling bishop.

VI. The act does not compel a "transfer" of the Cathedral from one jurisdiction to another.

The Cathedral has always been, whether as parish church, diocesan see or administrative center of the *Russian Church in America*, an integral part of an identical body, whether diocese or autonomous district (regardless of the actual occupancy by the Kedrovsky family, an

unfortunate but irrelevant incident). The corporations owning the Cathedral in succession were under the administrative control of the Most Sacred Governing Synod until 1917-1918, the patriarchate until April 2-4, 1924, and the *Russian Church in America* since then to the present. The statute merely determines that the *Russian Church in America* should continue in control of appellee.

The fact that Benjamin is in actual occupancy is coincidental, but irrelevant.

VII. None of the other alleged errors assigned by appellants merits serious consideration.

The statute effects no transfer of property. The full ownership of the Cathedral remains in appellee. The Church of Russia is not a juridical person, under Russian or American law. It has no vested property rights in the Cathedral.

No federal question is presented by the fact that the action was commenced one day before the statute became effective.

The remarks of the Court of Appeals as to the disposition of the case in the absence of the statute in question on this appeal have not the finality required for review in this Court.

The use of the *Kedrovsky* record was immaterial.

Appellants' motion for reargument in the Court of Appeals called particular attention to the alleged failure of that court to rule on the defense of limitations, as appellants admit (brief, p. 48). The denial of the motion must, therefore, be deemed to have been a ruling that the defense was without merit. The court was not required to write an opinion on the point. Whether or not the defense has merit is not a federal question.

ARGUMENT.

POINT I.

As a basis for its determination that the accustomed beneficiaries should enjoy their traditional houses of worship under the administrative control of the governing authorities of the *Russian Church in America*, rather than that of the envoy of the Moscow patriarchate, the legislature is to be presumed to have acted reasonably in tracing and identifying the beneficiaries of religious trusts, in preventing a diversion of the trust properties and in deciding which trustees might be relied upon to carry out more effectively the purposes of the trusts.

The words "trusts" and "trustees", in the above headnote, are not used in a technical sense. The legislature was dealing with religious corporations and the administration of the property which had been donated to them. A gift to a religious corporation for its general purposes does not create a technical trust (Restatement of Trusts, sec. 348, intro. note; 3 Scott on Trusts § 348.1; ibid., 1951 Supp.; cf. *St. Joseph's Hospital* v. *Bennett*, 1939, 281 N. Y. 115, 121; *Tabernacle Baptist Church* v. *Fifth Avenue Baptist Church*, 1901, 1st dept., 60 App. Div. 327, 335, aff'd, 1902, 172 N. Y. 598). The corporation takes "the whole legal and equitable interest in the gift" (*Levy* v. *Levy*, 1865, 33 N. Y. 97, 116; *Reformed P. D. Church* v. *Mott*, 1838, Ct. Ch., 7 Paige 77, 82; *Bird* v. *Merkles*, 1895, 144 N. Y. 544, 551).

The state, however, has an interest in seeing that the property of a religious corporation is applied to its proper corporate purposes (cf. *St. Joseph's Hospital* v. *Bennett*, *supra*, 281 N. Y. at p. 119). The state is the supreme guardian of property devoted to a charitable use (cf. *Matter of*

Trustees of N. Y. Protestant Episcopal Public School, 1864, 31 N. Y. 574, 592). It exercises "a general superintendence over charities as *parens patriae*". (Fowler: Charitable Uses, Trusts and Donations, p. 57; cf. *Mormon Church* v. *United States*, 1890, 136 U. S. 1, 50-64).

In exercising its powers over property dedicated to religious uses (whether or not subject to technical trust) the state may determine (a) who are the rightful beneficiaries (b) what are the original purposes or, if they have become impracticable or impossible of literal fulfilment, what are the purposes nearest to the original which can be fulfilled (cy près) and (c) who are the proper trustees or administrators.

A. The finding of the legislature that the *Russian Church in America* was identical in fact with the North American diocese, as it existed at the time of the Detroit sobor of 1924, was not contradicted by the evidence and should be accepted by this Court.

The term "Russian Church in America" is defined in § 105 of Article 5-6 to refer to a "group of churches, cathedrals, chapels, congregations, societies, parishes, committees and other religious organizations of the Eastern Confession." This language is comprehensive, evidently intended to include spiritual bodies as well as religious corporations.*

The definition then specifies the four names by which the "group" was known during four successive periods. The first three of these were the names of the mission or

* For the distinction between a religious corporation and the spiritual body with which it is interrelated on the temporal plane, see *Walker Memorial Baptist Church* v. *Saunders*, 1941, 285 N. Y. 462, 472. A religious corporation "is the humble handmaid of the church, created by the state for the purpose merely of conducting the business affairs of the church" (Zollman: American Church Law, 1933, §146).

diocese in North America as it was known from 1793 to 1924 (R. 7-8). The fourth is the name of the *Russian Church in America* as now existing.

Thus §105 identifies the existing body with the mission or diocese previously existing.

No proof was offered to contradict this legislative finding.* While it is true that six delegates to the 1924 sobor voted against the resolution declaring the temporary autonomy and two delegates abstained (R. 187), there is no proof that the parishes represented by these eight delegates attempted to withdraw from the "group". The same may be said as to the parishes which were unable, because of the expense or otherwise, to send delegates to the sobor. They are presumed to have assented to the expressed will of the "overwhelming majority" (R. 187) who voted for the resolution (*cf. County of Cass* v. *Smith*, 1877, 95 U. S. 360, 369). *De facto*, therefore, whatever the canonical validity of their assumption of autonomy, the organizations which constituted the North American diocese on April 2-4, 1924, became the *Russian Church in America*. Unless their conduct worked a forfeiture of the properties which had been dedicated to their use (whether as a diocese or as parochial units) prior to the 1924 sobor, the members continued to be the beneficiaries of those properties after the sobor and still are.

So far as concerns the beneficiaries of the Cathedral, it is clear that originally the property was dedicated to the use of the parish of St. Nicholas (*supra*, p. 17). The beneficiaries were the worshippers who attended the parish

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* In purporting to state the substance of the statute, appellants state (brief, p. 2) that the group called the *Russian Church in America* "had belonged *to a larger group*" constituting the old diocese. There is no such implication in the statute and no such proof in the case. The two bodies were identical, as found by the legislature.

church. They also, under the law of New York, were the members of St. Nicholas' Corporation, although they had no voice in selecting the trustees* or officers of that corporation (*Robertson* v. *Bullions*, 1854, 11 N. Y. 243; *People's Bank* v. *St. Anthony's R. C. Church*, 1888, 109 N. Y. 512). When the church became a cathedral, the beneficiaries of the trust, and the members of the corporation, automatically widened to include all of the worshippers in the diocese.

Appellants make the extraordinary suggestion that the exclusive beneficiary of the Cathedral has always been and is the ruling bishop (appellants' brief, pp. 8, 14, 42). They concede to the faithful some "undefined rights * * * subordinate to the rights of the appointed archbishop" (p. 9).

Their own proof, however, belies this theory. In the papers supporting the application of St. Nicholas' Corporation to the Supreme Court of New York for leave to convey the Cathedral to Archbishop Evodokim (Def. F.: order, petition, affidavits, etc., pr. R. 229, off. R. 71-72) it was several times stated that title to the properties of the Church in North America was held in trust for the Church *and its parishioners* (R. 230, 231, 233, 235). Also, the finding of fact, made by Special Term in *Kedrovsky* v. *Rojdesvensky* and not disturbed on appeal, which was introduced in evidence in the present case by appellants, was to the effect that title to the Cathedral was in a "domestic religious corporation,** subject to a trust, *for the uses of said Russian Orthodox Church [in North America] and the members thereof,* according to the canons and rules of said Church,

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* The trustees were the Russian ambassador and consul general, as then required by statute (Rel. Corps. L., §91).

** St. Nicholas' Corporation, which then had title, was referred to, although its name was erroneously stated in the finding.

pursuant to which the Ruling Archbishop" was entitled to occupy the premises, etc. (R. 70).

Despite appellants' cryptic reference to "the interlocking status and relationship of the ruling archbishop of a diocese and its cathedral under the canon law, usages and discipline of all hierarchical churches" (appellants' brief, p. 9), there is nothing mysterious about the relationship under the law of New York. The clergy, whether ruling archbishop or humble subdeacon, are the servants (ministers) of the faithful. "* * * whosoever will be great among you, let him be your minister; And whosoever will be chief among you, let him be your servant" (Matt. 20-26). As servants of the worshippers, whether a parish congregation or a diocese, they are not *ipso facto* vested with any estate, legal or equitable, in the real property which it is their duty or privilege to use for religious purposes under the rules of the spiritual body to which they are subject. The entire beneficial ownership is in the religious corporation of which the worshippers are members. The clergy are merely licensees of the owner (cf. *Youngs* v. *Ransom*, 1859, Gen. Term, Kings, 31 Barb. 48, 55).

So far as concerns the Cathedral specifically, the terms of the trust upon which it is held are clearly set out in appellee's charter (L. 1925, c. 463, R. 169). Appellee was authorized to acquire, take and hold, in trust or otherwise, all property necessary or proper for its objects or purposes, which were specified to be "the acquiring, maintaining and management of a cathedral church and its appurtenances in the city of New York *as a central place of worship of the Russian Orthodox Church in North America* * * * together with the residence of the ruling archbishop * * * and such incidental foundations, schools, facilities and other religious, charitable and educational work as may be properly

connected therewith *in and for the said Russian Orthodox Church in North America*" (R. 169-170).

This charter had been drafted by Metropolitan Platon with the help of George Zabriskie (who later was to act as his counsel in the Court of Appeals on two appeals, as shown by the reported decisions). Mr. Zabriskie had interested several members of the legislature in passing the act (R. 171-172). The inference is inescapable that the term "Russian Orthodox Church in North America," as used in the act, referred to the recently created *Russian Church in America*, of which Platon was then the head. It is notable that no mention whatever is made in the act of a *diocese* or of the Moscow hierarchy.

Appellants may seize on the reference to the appointment of Platon by "His Holiness, the late Patriarch Tikhon," appearing in the minutes of the first meeting of appellee's trustees (R. 174), as rebutting the inference above mentioned. The reference was perfectly natural. The *Russian Church in America* considered itself a part of the mother church of which Tikhon had been the beloved head. "We love and always will love the Church of Russia," said Mr. Greaves at the 1924 sobor (R. 182). The Russian Church in America "considers itself as part of the Russian Church," according to the official announcement of July 10, 1945 (R. 214). Platon had chosen to litigate with Kedrovsky on the issue of which was the validly appointed bishop, rather than on the issue of whether the Detroit sobor of 1924 had acted validly. The New York court had a few months previously adjudged him to be the validly appointed bishop without reference to the 1924 sobor. The late Patriarch's name was deeply revered by the American flock of which he had once been the shepherd. The reference in the minutes to his appointment of Platon has no significance.

The beneficiaries of the Cathedral trust, then, are the worshippers who formerly constituted the membership of the North American *diocese* and now constitute the membership of the *Russian Church in America.* This is true of all of the properties which were dedicated to the use of the *diocese* or any of its components prior to the 1924 sobor, unless by their conduct the members have forfeited their interest.

What were they to do? On the one hand, their beloved patriarch was confined to a monastery, seriously ill, with four doctors in attendance placed there by the Soviet government (R. 181). Only four months after confirming in writing the appointment of their ruling bishop, the patriarch had issued a decree dismissing him for publicly criticising the Bolshevik regime. On the other hand, the schismatic Kedrovsky, a married man posing as a bishop, the servant of a group which had declared war on capitalism to be holy to Christians (*supra,* p. 13), was already on the American scene, appealing to the courts for control of their properties. Were they to stand meekly by and lose their properties to Kedrovsky by default? Were they to submit meekly to the decree dismissing Platon, which they knew had been extracted from the ailing patriarch under duress (R. 184), and await the coming of a new appointee? They knew "that no bishop will be permitted to leave Russia for abroad except a 'Living [Renovated] Church' one" (R. 186). They were unanimous in their desire "to keep our American Church from Soviet interference" (R. 186).

Fortunately, from a strictly technical point of view, they had canonical authority to organize themselves into an autonomous district. Appellants suggest (brief, p. 11n.8) that the patriarchal ukase of November 20, 1920, No. 362, was not relied on to, and did not, justify the action

of the Detroit sobor. The contrary is true. The ukase was referred to in unmistakable terms by a speaker, Fr. Chepeleff, as a "circular letter" addressed by Patriarch Tikhon to all diocesan bishops (R. 185, where the date is given as 1921, evidently an inadvertent error in the speech or transcription). Appellants say that the ukase was addressed to *dioceses in Russia* and had no application to the American diocese. But appellants' own witness, Metropolitan Gregory, testified that the ukase "was limited in time to such period as communications between the Patriarch and *the bishops outside of Russia* were unavailable" (R. 166), thus implying that the ukase was addressed to such bishops. The occasion for its issuance was doubtless the civil war which had cut off communication between the central church office and the dioceses in the south of Russia, but the ukase was not limited by its terms to dioceses within Russia and was never revoked as to the dioceses abroad (R. 155). The political pressure upon Patriarch Tikhon and his confinement deprived him of a true means of communicating with the North American diocese (R. 140-141), so that the ukase became operative in the case of that diocese. This was the opinion of the New York courts in the Yonkers case (*supra*, p. 38), and may, therefore, be presumed to have been found by the legislature, which is assumed to know of precedent judicial decisions on the subject matter of a proposed enactment. The question whether ukase No. 362 authorized the action of the Detroit sobor, so far as the decision of that question affects the administration of property in New York of a domestic religious corporation, being one of state law (cf. *Sims* v. *Greene*, 1947, 3 circ., 160 F. 2d 512, 515), there would seem to be no occasion for this Court not to accept the ruling made in the Yonkers case and adopted in the decision now appealed from.

In establishing the *Russian Church in America* the members of the diocese, under the leadership of Platon, voted for the "sobornal" or conciliar polity (i.e. government by bishops, clergy and laymen in council or convention assembled) which had been enacted by the Great Sobor of 1917-1918 and was referred to under point 4 of ukase No. 362 (R. 178). The Church was to be governed by an archbishop, bishops' council, council of clergy and laity and periodic sobors of the entire Church (R. 187). The committee to draft a constitution was to be guided by the enactments of the Great Sobor (R. 188). These resolutions have been carried out.

The *Russian Church in America* is governed by sobors of the entire Church (which have been held in 1924, 1934, 1937, 1946 and 1950), a metropolitan archbishop, a bishops' council and a metropolitan council of clergy and laity. The statutes for administration of parishes were adopted at the 1934 sobor (R. 77) and those for government of the Church at the 1937 sobor (R. 76). The facts recited in this paragraph so far as occurring before 1945, are presumed to have been found by the legislature, which made specific reference to most of them in §107 of Article 5-C.

It may be noted here that appellants' description of the Church of Russia as "hierarchical" is quite inaccurate, if they are referring to canon law and not to practice. The polity, as enacted at the Great Sobor of 1917-1918, was definitely "sobornal." True, as matters turned out, that polity may never have been put into practice in Russia because of political conditions. The American lay delegate was refused a visa to attend the 1945 sobor in Moscow (*supra*, p. 39). The parish statutes adopted by that sobor and imposed on the American parishes in the patriarchal diocese "almost" abolish "the right of electing leaders, which was promulgated by the all-Russian Sobor of 1917-

1918 according to an American standard which is in harmony with conditions of life in democratic America" (R. 245). It is ironical that the patriarchate should attempt to impose a *hierarchical* polity on its American diocese, when the polity of the Church of Russia, as adopted at the Great Sobor, was *sobornal* and its polity since 1929, as imposed by Russian law since 1929 (*supra*, p. 34) is congregational. The legal effect of the fact last mentioned will be discussed later (*infra*, p. 84).

B. The legislature is to be presumed to have found upon sufficient evidence that the members of the *Russian Church in America* have acted correctly in rejecting all demands of "loyalty" to the Soviet regime.

Appellants (brief, p. 30) assert that there is no proof that such a demand was made. The evidence is conclusive that the demand was made repeatedly.

Metropolitan Benjamin testified (R. 113-125):

> "Q. When the Central Administration of the Patriarchal Church was set up in 1927, did you give the acting locum tenens a pledge of loyalty?
>
> A. No oath was required, but *loyalty to the Soviet Government was required,* with the understanding that I would not participate "in any political fight against the Government. But I was not under the obligation to recognize or defend this regime. I had to be non-political, not having any political affiliations.
>
> . . . . . .
>
> Q. *Did acting locum tenens* [of the patriarchal throne] *Sergius demand an obligation of loyalty similar to the one given by you from the other members of the Russian Orthodox clergy abroad?*
>
> A. *Yes,* in the sense of refraining from political fight but not to defend the Soviet Government.

Q. What do you mean by a political fight?

A. *To preach in the Church against the Soviet regime, to talk in other places in that direction, but in the name of the Church, against the Soviet regime.*

* * * * * * *

"Q. *Do you consider any criticism of the Soviet regime as a violation of that pledge?*

* * * * * * *

A. *For the benefit of our Church, our Church on the whole required any absence of criticism.* It was for the good of the Church and it was an expression of the Christian attitude to the Government.

Q. *And that applies to the Russian clergy abroad?* A. *Yes,* because the Church is one, and it was necessary for the main center of the Church in Russia, but the Church never demanded that the churches abroad should recognize Communism or anything like that.

* * * * * * *

Q. *What was the necessity of asking the clergy abroad to give this pledge of loyalty?*

* * * * * * *

A. *Because the Soviet Government suspects the Church of disloyalty against the Government, and the conduct of the churches abroad gave reasons to have suspicions about the conduct of the Church in Russia.*

Q. *Did that apply to the American Church?* A. *Yes, sir.*

* * * * * * *

* * * When the question came up about the ordination of Reverend Turkevich as the Archbishop [sic] Leonty * * * Metropolitan recognized Metropolitan Sergius and asked permission for the ordination.

* * * * * *

* * * He gave the following answer: "* * * *ask Metropolitan Platon to publish* in the newspapers

• • • *that he* recognizes Metropolitan Sergius as the head of the Church and *is not active in politics.*

• • • • • • •

Q. I again want to make sure, your Eminence, that when you talk about political activity you don't mean what we Americans usually call political activity, that is, actively running for office or supporting candidates for office, but merely mean public speaking and writing, is that correct? A. *The answer of the Russian Church is absolutely clear.* It cannot prevent any citizen from fulfilling his obligations, and does not demand it. *It only demands refraining from opposing the Soviet Government, refraining, but not subjugating to it.* And I am repeating, that is for the good of the Church. It is an obligation of the Church to act in this manner.

Q. When you say 'opposing the Soviet Government,' you mean criticizing it in speeches or writing? A. *As individuals, they may criticize, but they cannot do that in church or in the name of the Church* because that would be injurious to the Church. Patriarch Tikhon pointed that out too literally in these words, 'Understand at last that *your political actions abroad are injurious to the Church,* not to the Soviet regime, but to the Church'.

Q. *That policy which your Eminence has referred to of requiring some kind of an obligation, whatever it was, from the clergy abroad continued continuously from 1927 to the present day, did it not?* A. It demands that a member of the clergy occupy himself with spiritual matters, and nothing more.

Q. No, *I asked as to whether the policy* of the Central Administration of the Patriarchal Church in this regard *was continuous from 1927 to the present time?* A. *Yes.*

Q. You advised the present Patriarch just prior to his election that an *essential condition of reunion between the Mother Church and the American Church*

was the fullest loyalty to the Soviet power, did you not? A. (In English) *Yes.*

• • • • • • •

Q. And you advised him that you didn't think that the American Church would accept that condition, did you? A. I wrote him directly that this condition will be difficult to accept by the American Church and asked him to remove this question • • •

Q. But, nevertheless, he did not follow your advice, did he? A. *In his Ukase of 1945* [Def. Ex. D] *he made the demand that the Church refrain from opposition to the Soviet regime."*

Thus it is established, out of Metropolitan Benjamin's own mouth, that the pledge of "loyalty" was demanded (1) from the American clergy when Benjamin came here; (2) from Platon at the time of the exchange of telegrams regarding the consecration of Bishop Leonty; (3) from the American parishes (i. e. clergy *and laity*) in the ukase of February 16, 1945, and (4) as a continuous *policy* to the present time.

The *policy* evidently covers laity as well as clergy: for example, Metropolitan Benjamin applied it to the legal adviser of the Russian Church in America (R. 123).

As to the canonical basis for the requirement of loyalty, Benjamin testified (R. 123):

"Q. • • • Will you point out to me any provision of the Statutes of 1917-1918 or of the ancient Canons or of the Scriptures which justified the acting locum tenens to require from the clergy abroad any obligation whatever to refrain from what you call political activity?

• • • • • •

A. Jesus Christ himself said, 'Give to God what is God's and to Caesar what is Caesar's.' In the

> Church canons we "have nothing to indicate that members of the Church should be active in politics. But, on the contrary, [it] is pointed out that peoples of the Church should not occupy themselves with affairs of the world, that *members of the Church should not occupy themselves with affairs of the world.*"

It should be noted that this language is broad enough to include laity as well as clergy.

In other words, according to Metropolitan Benjamin, no American member of the Church, clergyman or layman, may speak in the name of the Church on such burning issues as the slave labor camps in the Soviet Union, the return of prisoners of war held by the Soviet government, the obstruction by that government of reasonable efforts to promote disarmament, the connection of that government with the Korean situation, etc.

If the patriarchate were consistent in applying the same rule to itself as to the American faithful, it could at least be said that it was following a plausible, although extremely severe, rule of discipline, more appropriate to the primitive Church in the hostile Roman Empire, or to cloistered monks in the modern world, than to a large body of American citizens leading active lives in the community.

But, as has been pointed out (*supra*, p. 45), the patriarchate itself is very actively mixing into the affairs of the world. Yet it would forbid the American faithful to follow the practice of the preponderant majority of religious bodies in the United States who are making themselves heard, either singly or through such federations as the National Council of Churches, on questions where a moral issue is at stake.

> "The view of those favoring the entry of the Church into the arena of public life for the purpose

of accomplishing moral reforms is undoubtedly very strong in America, both in Protestant and Catholic Churches. It is represented in general by the Federal Council of Churches of Christ, the social-welfare conferences and councils of the various Churches, of which the National Catholic Welfare Conference is one of the most prominent, and by periodicals, such as *The Churchman* (Episcopalian background) of New York, *The Commonweal* and *America* (Roman Catholic) of New York, and *The Christian Century* (Protestant) of Chicago. It also has its representatives at most of the great theological seminaries, such as the Union Theological Seminary, Yale Divinity School, the Divinity School of the University of Chicago, the Catholic University of America, and the Jewish Institute of Religion."

Stokes: Church and State in United States, v. III, p. 670.

According to Metropolitan Benjamin, although the patriarchate is speaking on the burning issues of the day, the lower clergy and laity must remain silent. Or perhaps he would permit them to subscribe to the utterances of the patriarchate which invariably echo the official Soviet line.

It may be imagined what a part the representative of the *Russian Church in America* would play in the deliberations of the National Council of Churches if he were subject to such a policy. More likely, the patriarchate would forbid membership in that organization, as it has itself refused to join the World Council of Churches which it considers a tool of Anglo-American imperialists.

But there are even more important implications of the policy which Metropolitan Benjamin swore to be still in force. The Church is not only a religious force in America,

it is a moral and educational force. The children attend church schools and imbibe not only religious ideas but ideas on the questions of the day in all fields. The pastors are the source of moral and educational stimulation as well as religious. The parish houses are centres of social and cultural life. These facts are particularly true of the *Russian Church in America* whose young people have developed a remarkably active federation of parish clubs.*

Are all of these centers of educational and social life to be subject to the censorship required by Metropolitan Benjamin's policy? Whenever a question affecting the Soviet government comes up, is a pall of silence to descend on the gathering, lest there be a violation of the pledge of "loyalty"?

The *Russian Church in America* has consistently refused to give this pledge. Its Metropolitan Council has officially announced that it "would be inconsistent with the duties and obligations of loyal American and Canadian citizens, and contrary to the traditional atmosphere of freedom of speech and political action in those countries, for the Russian Church in America to give the pledge of loyalty to a foreign power which is implicit in the demand of the Patriarchal Ukase [of February 16, 1945]" (R. 216).

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* "In the molding of our American civilization, religion has played a decisive part. European immigrants transplanted into American soil their Old World faith and religious institutions. For the most part, the immigrants were a deeply religious people and their churches occupied a central and dominant part of their lives."

Rep. of Sen. Com. on Judiciary pursuant to Sen. Res. 137, 80th Cong. 1st sess., Rep. No. 1515, 81st Cong. 2d sess., April 20, 1950, p. 229.

"* * * In many a Slavic community the church is the greatest single influence in the life of the people, the center of practically all leisure-time activities * * *"

Miller: Peasant Pioneers, p. 139.

The legislature is to be presumed to have known of those demands and those refusals and to have determined that the *Russian Church in America* acted correctly in the matter.

Appellants suggest (brief, p. 33) that the relationship between the Church of Russia and the Soviet state "is a matter of high church policy to be determined by the Chief Authorities of the church and such policy is conclusive upon all the members of the church and upon the civil power in all matters affecting the church and its members" and that the American courts "have no power to pass upon the propriety of the policies or the acts of the Patriarch."

The case cannot be stated so bluntly. Here the autonomous district had been established as a matter of sheer necessity and within the terms and spirit of ukase No. 362. Was it obliged to end its autonomy on the terms demanded by the patriarchate? It will be noted how subtly those terms were phrased: a sobor to be presided over, not by Theophilus, but by the special patriarchal envoy; a pledge of abstention from political activities against the U. S. S. R.; the election of a Metropolitan, Benjamin and the special envoy being recommended by the patriarchate—another slap at Theophilus; the reservation to the patriarchate of the right (*a*) to refuse confirmation of the elected Metropolitan for "any motivated reason whatsoever"—which could easily be political, not canonical or moral—(*b*) to confirm candidates for bishop (*c*) to reward clergy with higher titles, (*d*) to hear appeals as regards bishops, clergy and others (Def. Ex. D).

Such reserved powers would give the patriarchate complete control of the thoughts and speech of the *Russian Church in America.* No clergyman hoping for advancement would dare open his mouth except to echo the propaganda line of the Soviet government. Even the laity would be muzzled.

There is no canonical basis for the demand of "loyalty." Jesus did not call for allegiance to two Caesars. If the Soviet government will not permit the patriarchate to grant full and unconditional autonomy to the *Russian Church in America,* such as was suggested by Professors Fedotoff, Karpovich, Timasheef and others (R. 246), the present status—unhappy as it is—must continue.

It is difficult to conceive that the patriarchate's refusal of such full autonomy is prompted by any but political reasons. Autocephaly—a wider grant than autonomy—was granted to the Church of Georgia by Patriarch Sergius in 1943 (R. 246-247). That is a body doubtless much larger than the *Russian Church in America.** Why did the patriarchate release all rights, even those of a spiritual or symbolic character, over the great Church of Georgia and yet insist on retaining administrative control over a few hundred parishes in America? The answer is obvious: The Kremlin is in a position to suppress criticism in the Church of Georgia without the aid of the Moscow patriarchate; not so in the American parishes.

> "Lenin in 1920 made the definitive statement of autocratic government. 'Why', he asked, 'should a government which is doing what it believes to be right allow itself to be criticized? It would not allow opposition by lethal weapons, and *ideas are much more fatal than guns.*'"
>
> 16 Encyc. Brittan., 1951, p. 356.

The members of the *Russian Church in America* have acted correctly in clinging to their liberties of thought, speech and discussion.

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* As of July 1, 1941, the estimated population of the Georgian republic was 3,722,252 of which 67.7% was of Georgian origin (*USSR: A Concise Handbook*, Cornell Univ. Press, 1947, pp. 6-7).

They have not forfeited their traditional shrines or other temporalities. They are still the beneficiaries of the properties originally dedicated to their use.

C. The legislature is to be presumed to have found upon sufficient evidence that there would be a diversion from the original trust purposes if it were held that only those worshippers who accepted the administrative control of the patriarchate were entitled to enjoy the properties which were dedicated to the use of the diocese prior to April 2-4, 1924.

If appellants' arguments are correct, not only the cathedral, but all properties which were dedicated to the use of the old diocese or any component unit prior to the Detroit sobor, have been forfeited by the members of the *Russian Church in America* and must be administered by the patriarchal authorities for the benefit of the members of the new patriarchal diocese. That diocese was organized by Metropolitan Benjamin who, according to the ukase of June 29, 1934, reported "that our North American Diocese has begun official existence" (R. 225), "a significant admission"; comments Judge Conway, "that the former North America Diocese, which had by that time become a metropolitan district [*Russian Church in America*], had achieved practical administrative autonomy and that it was necessary for the Russian church to organize a new diocese" (R. 265). A similar admission that two separate bodies existed appears in the ukase of February 14, 1945, where reference is made to "the present exarchate headed by Metropolitan Benjamin" and "the Metropolitan District, headed by Metropolitan Theophilus" (R. 227).

The original trust purpose, to which the properties of the old diocese were dedicated, was worship and connected use according to the faith, dogma, canons, discipline, rules and usages of the Russian branch of the Eastern Confes-

sion. It is true that under the rules in force prior to the Great Sobor of 1917-1918 the Czarist government had much to say in church affairs. But the Czar was a believer and the protector of the Church; the Church was established; the Church and the State were allies. The Soviet government is the avowed enemy of the Church; it is officially atheistic; it plays a cat and mouse game with the Church, sometimes persecuting it and sometimes tolerating it (Timasheef: Religion in Soviet Russia).

In a conversation with members of an American trade union delegation, Stalin said:

> "We conduct propaganda and shall conduct propaganda against religious prejudices. * * * The Party cannot be neutral with regard to religion, and it conducts antireligious propaganda against and all religious prejudices because it stands for science, while religious prejudices go against science, since every religion is something contrary to science. * * * * * * The Party cannot be neutral with regard to the bearers of religious prejudices, with regard to the reactionary clergy, poisoning the minds of the toiling masses. Have we oppressed the reactionary clergy? Yes, we have oppressed them. The trouble is only that they are not yet fully liquidated * * * (Pl. Ex. 15-B: statement, pr. R. 208, off. R. 85-86).

This statement reflected the position of the Soviet government in 1927 (R. 85-86).

Appellants, in Appendix B to their brief, print some extracts from writers to the effect that after 1938 the policy of the government changed. It is common knowledge that when Hitler attacked Russia the Soviet leaders, as a war measure, stopped the anti-religious propaganda and somewhat enlarged the privileges of the Church. But, as evidenced by the news article already quoted (*supra*, p. 45),

the pendulum is beginning to swing the other way again. The essential point has been well expressed by Mr. Justice Van Voorhis in the dissenting opinion in the Appellate Division (Jurisdictional Statement, p. 110):

> "Even the intellectual and spiritual ties by which men are held together, are so controlled by the totalitarian state as ultimately to disintegrate all autonomous groups outside of the state itself, or the single political party that rules it. That technique is applied to scientific and cultural as well as to religious groups, so that ultimately no autonomous group with any independence remains. In the final analysis, the state and the state alone becomes all. * * *"

The patriarchate is completely within the power of the government and must carry out its every wish. Today the patriarchate is being utilized as an instrument of propaganda; tomorrow it may be deprived of any means of expression.

Under these circumstances, and in the light of what has happened since the Bolshevik Revolution, a legislative finding that it would be a diversion from the original trust purpose to award the properties to the new patriarchal diocese is reasonable and is to be presumed. Conversely, the legislature is to be presumed to have found that to permit the *Russian Church in America* to remain in enjoyment of the properties is in accord with the terms of the original trust.

As concerns the Cathedral it has already been shown (*supra*, p. 57) that the terms of the trust were fixed by the legislature in appellee's charter, which clearly indicates the *Russian Church in America* as the beneficiary. No exception has ever been taken to these terms which were enacted over 25 years ago.

But if it is considered that the terms of the trust were fixed in the charter of St. Nicholas' Corporation, the result

is the same. The original beneficiaries were the members of that corporation viz. the worshippers at the parish church. Subsequently the membership of the corporation was enlarged to include all of the worshippers in the diocese. The trustees of the corporation were required to administer its property in accordance with the rules of the "ecclesiastical governing body" to which the corporation was subject (Rel. Corps. L. §5). Under those rules the property was to be administered for the benefit of the members of the old diocese. As in the case of the properties of the old diocese generally, it would be a diversion to award the Cathedral to the members of the new patriarchal diocese and, conversely, to hold that the members of the *Russian Church in America* are entitled to the enjoyment of the Cathedral—which is the holding below—is in accord with the terms of the original trust.

D. Even if it is considered that the terms of the original trusts cannot be carried out, the state has power, in the exercise of the *cy près* prerogative, to decree that the properties dedicated to the use of the diocese prior to April 2-4, 1924, may be enjoyed by the original beneficiaries subject to administrative control by the *Russian Church in America* instead of by the patriarchate.

As the successor to the prerogative of the English crown, the *parens patriae*, the legislature may exercise the *cy près* power in a manner similar to the judicial exercise authorized by statute (Real Property Law §113 subd. 2; Personal Property Law §12, subd. 2; cf. *Mormon Church* v. *United States*, 136 U. S. 1). The original terms of the trusts may be carried out in all except one particular viz. administrative control by the central church authorities in Russia. Literal compliance in that one particular has been rendered impracticable because of political conditions in Russia. The state may determine that the trusts be carried out notwith-

standing (cf. *In re Free Church of St. Barnabas*, 1949, Pa. Com. Pl. Berks, 41 Berks 215; *Will of Lott*, 1927, 193 Wis. 409, 412, 414; *Williams Estate*, 1944, Orphans Ct. Tioga, 52 Pa. D. & C. 107, 111-112). The *cy près* power may be exercised in respect of corporate assets as well as technical trusts (*Sherman* v. *Richmond Hose Co.* No. 2, 1921, 230 N. Y. 462).

E. The determination of the legislature that the governing authorities of the *Russian Church in America* are the trustees who may be relied upon to carry out more effectively and faithfully the purposes of the religious trusts created for the benefit of the diocese prior to April 2-4, 1924, is supported by sufficient evidence and is reasonable.

Once it is granted that, as has been shown in the foregoing discussion under this Point I, (*a*) that the members of the *Russian Church in America* are still the beneficiaries of the religious trusts created for the benefit of the members of the old diocese and (*b*) that such determination is either a compliance with the original trust purposes or a reasonable exercise of the *cy près* prerogative, it naturally follows (c) that the governing authorities of the *Russian Church in America* are the proper trustees. Otherwise it would be necessary to hold either that the proper beneficiaries must accept administrative control by the patriarchate, involving the abridgement of freedom of public speech and discussion above indicated or, in the alternative, that they must forfeit their interest in the properties.

No attempt will be made to lock horns with appellants over the issue as to whether the patriarchate is "free", or as to whether the legislature is to be presumed to have made a finding on the issue. Certainly, as has been shown (*supra*, p. 62), Metropolitan Benjamin's own testimony is conclusive proof that the patriarchate would require those people in America who accepted its jurisdiction to

refrain from public criticism of the Soviet regime. Also, the partriarchal ukase of February 16, 1945 (Def. Ex. D), not only confirms Benjamin's testimony but shows that the patriarchate insists on so close a relationship that all church people under its administrative control would be completely at its mercy. The priest or lay leader who criticized the Politburo would be disciplined; the eulogist of Stalin would be rewarded. And now that the patriarchate is frankly permitting itself to be utilized as an instrument of Soviet propaganda (Appendix C, *infra*, p. 118), it is not difficult to surmise that attempts would be made to utilize the American parishes in the patriarchal jurisdiction for similar purposes. Appellants will doubtless object in their reply brief to the use of the material contained in Appendix C—as they object in their main brief (p. 35) to the quotations by Judge Conway from the writings of Anne O'Hare McCormick and Walter Bedell Smith (R. 283-284, fn. 17)—on the ground that this material could not have come to the attention of the legislature since it had not been published when Article 5-C was enacted. The thought that the Bolshevik masters of Russia operated a world-wide apparatus of propaganda can hardly be said to have been a novel one in 1945 and may have occurred to the legislature even—to use the appellants' words (brief, p. 35)—"in the climate of opinion of 1945". Suffice on that subject to point out that as early as 1924 Mr. Justice Ford had said (*supra*, p. 25): "* * * The property used by the Russian Church [in the United States] totals in value an immense sum. If the Soviet authorities can gain control of all these, what a base for their revolutionary propaganda they will have secured." That decision is to be presumed to have been within the knowledge of the legislature. If this Court is asked to perform the "delicate judicial task" of

passing on the validity of Article 5-C and it is claimed in defense of the statute that one of the underlying grounds is a legislative finding that the governing authorities of the *Russian Church in America* may be relied upon to carry out more effectively and faithfully the purposes of the religious trusts involved, because of the likelihood that the patriarchate would be utilized as an instrument of Soviet propagarda in this country, then, it is submitted the attention of the Court may properly be called to conclusive evidence of the fact that the patriarchate is being utilized as an instrument of propaganda, having world-wide dissemination, even although that evidence has come into existence since the judgment appealed from (cf. dissent of Brandeis, J., in *Burns Baking Co.* v. *Bryan*, 1924, 264 U. S. 533).

Appellants argue (brief, p. 27, fn. 19) that appellee did not raise the issue of the relationship between the patriarchate and the Soviet government at the trial. As to this it may be observed, in the first place, that no question as to the constitutionality of Article 5-C was raised at the trial by the appellants. Their first mention of that question was in the brief submitted to the trial judge after the end of the trial. Secondly, the record shows that the status of the Church of Russia under the Soviet regime was gone into at the trial and the appellants had, and availed themselves of, the opportunity to introduce evidence to meet appellee's theory which, in substance, was that political conditions in Russia should be taken into account in passing on the construction of Article 5-C. When Prof. Fedotov was asked to "describe the relations between the Russian Orthodox Church and the Government in Russia" starting with the Bolshevik Revolution, appellee's counsel indicated that the testimony was offered in support of the legality of

the autonomy of the *Russian Church in America* (R. 44). After referring to the birth of the Episcopal Church at the time of the American Revolution, he then said (R. 45):

> "* * * we think that those close, minute, administrative regulations that were enacted by the 1917-1918 Sobor [in Moscow] *under the present political conditions in Russia and the political conditions that have existed ever since the Revolution, and particularly with tension that exists at this very moment between the two countries,* are not appropriate and will not be enforced by any country."

Appellants' counsel then began to state the facts in *Watson* v. *Jones*, 1871, 13 Wall. 679, and was interrupted by appellee's counsel who said (R. 45):

> "* * * I will concede that in the case of a denomination having what is called and episcopal or synodal form of government that the lower units, such as the parishes, are bound by the discipline, rules, usages and decisions of the higher judicatory. No church lawyer can dispute that. I say that does not apply in this case. In the first place they have had no tribunals. There have been no adjudications before a tribunal. We are going to show that later. In the second place, *the political conditions under different forms of government require a modification of that doctrine.*"

Appellants' counsel picked up the gauntlet and at the outset of his cross examination made Prof. Fedotov admit that the Church under the Czarist government was "not free in her social and political activity" and in politics was an aid and instrument of Czarist policy (R. 87-88). In the course of the cross examination, counsel said (R. 92):

> "Q. And you understand that your testimony is being used as a foundation for the argument that

because of alleged conditions in Russia, the group of churches in the United States could declare themselves autonomous or independent?"

At a later stage of the cross examination Prof. Fedotov interpreted the 1920 ukase (Pl. Ex. 5) as referring to "a juridical, social, political and moral break," and "not only the postal break", in communications between the central church authorities and the bishops outside of Russia (R. 139-141).

The argument in the trial court was that political conditions in Russia created a *moral* break in communications which made the ukase of 1920 operative, therefore under *Watson* v. *Jones* the supreme judicatory was the American sobor. The decision appealed from reaches the same result, and also, without regard to the ukase, holds that political conditions in Russia have disqualified the Moscow hierarchy from functioning as the supreme judicatory. Under either form of argument the political conditions are relevant to the constitutional question raised on this appeal. Had the argument been expressed at Trial Term in the terms of the decision appealed from, appellants would not have presented different proof to meet it. Appellee's position on this question was disclosed at the trial, appellants put in proof to meet it and cannot complain if the Court of Appeals rested its decision on a presumed legislative finding as to the relationship between the Church of Russia and the Soviet government.

The evidence which appellants did introduce as to the status of the Church in Russia does not contradict the presumed legislative finding that the patriarchate is an instrument of Soviet propaganda.

(1) A book called "The Truth About Religion in Russia" was compiled by the patriarchate and is accepted

as an official publication of that organ (R. 102). The book asserts that the Patriarchal Church in Russia is free from restraint by the Soviet government and is at liberty to carry on its work without molestation by the Soviet authorities (R. 104).

(2) Metropolitan Gregory testified that the Patriarchal Church functioned effectively and without restraint and is functioning freely as an Orthodox Church, without interference by the civil authorities, and the political views held by the authorities, and any atheistic sentiment that they may have in no way interferes with the unhampered activities of the Church (R. 167).

Both of these statements, the one from the book and that of the witness, might be literally true and still the Patriarch and his synod be mouthpieces of the Kremlin.

Let it be assumed that, as reported in The New York Times of April 2, 1948 (*supra*, p. 45), "the top hierarchy of the Russian Orthodox Church * * * is completely and officially in sympathy with the Communist Government." Then when its official publications, as reported in the same article, and quoted in Appendix C (*infra*, p. 118), engage "in heated attacks on the Western powers," the hierarchy is simply expressing its feeling of "sympathy"; it is not suffering "restraint", "molestation" or "interference".

So, again, the Church might be functioning "freely" in Russia, even although it had been deprived of substantial means, its clergy reduced in social position, its authority to teach religion to children restricted and its organizational type changed from associated to congregational (Timasheef: Religion in Soviet Russia, pp. 24-28; 38-45; 49-53; 131; Gsovski: Legal Status of the Church in Soviet Russia, 8 Fordham L. Rev. 1 *et seq.*). In other words, it might be "freely" exercising the narrowly curtailed functions which it was permitted to retain.

But appellants offered no proof to the effect that the Patriarch and the members of his synod were not completely *controlled* by the government. Churches might be open for worship, parish priests might be conducting services, even seminaries and academies might be educating candidates for the ministry, and still the top hierarchy might be only a mouthpiece of the Soviet government.

The legislature may not have taken the Soviet brand of religious "freedom" at its face value.

> "* * * The prosecution of Christianity in Russia in the years following the revolution was communism at its most honest. The later 'freedom' of religion—**with its back broken**—was communism at its most deceitful." (Editorial in Wall St. Journal, Feb. 14, 1949).
>
> "* * * The church has again an official place in the Soviet Union, but as an agency of the state; on the same terms the religious leaders being imprisoned and executed as 'traitors' in the countries under Soviet control would be tolerated. When Caesar is also God there can be no divided tribute." (Anne O'Hare McCormick, The New York Times, April 8, 1950).

Appellants advert (brief, p. 28) to the resolution of the *Russian Church in America,* in convention assembled at Cleveland in 1946, requesting Patriarch Alexy "to continue us in the his fold and be our spiritual head" on terms of autonomy as contradicting the presumed legislative finding as to the status of the patriarchate. Appellants' argument fails to distinguish between the *spiritual* and *administrative* qualities of the office of Patriarch.

The name *Patriarch of Moscow and All Russia,* to a member of the *Russian Church in America,* stirs sentiments of pride and reverence, quite apart from his estimation of

the particular incumbent. He is required, in his liturgical worship, to pray for the head of the Church, as well as for all of the other Patriarchs of the East and other hierarchs. The Court may note that when the witness Fedotov testified under cross-examination that the official book "The Truth About Religion in Russia" was "untruth" and was asked

> "Q. You say the Patriarch of Moscow published untruths, is that it?"

he replied

> "A. It is against my feeling, but I must" (R. 102).

This feeling of reverence for the spiritual office is shown throughout the record. The *Russian Church in America* never broke off spiritual communion with the Patriarch; it was the Patriarchate that laid an interdict on the Church.

But at the same time the Church has always safeguarded its *administrative* independence. It has insisted on the right of self government.

The gist of the matter is this: that in his *spiritual* quality the Patriarch continues as head of the Church of Russia, of which the autonomous metropolitan district considers itself a part, but as *administrative* head he is disqualified so long as he permits himself to be utilized as an instrument of Soviet propaganda.

Parenthetically, he has also lost his function as administrative head of the Church in Russia, for that body has become of the congregational type by force of Russian civil law (*supra*, p. 34).

Appellants misconstrue the position of the *Russian Church in America* in regard to the Patriarch and his synod. To treat Alexy as a "holy man" because he is occupying

an office of great symbolical value does not disentitle the American parishes from refusing to accept him and his synod as a supreme administrative organ. The King of England is accepted by the members of the Commonwealth as a symbolical, not administrative, head.

Finally, on the question of the status of the Church in Russia, this Court, like the Court of Appeals and the legislature, is possessed of facts of common knowledge. "Judges are not necessarily to be ignorant in Court of what everybody else, and they themselves out of Court, are familiar with; nor was that unreal ignorance considered to be an attribute of the Bench in early and strict times" (*Lumley* v. *Gye*, 1853, Q.B., 2 El. & Bl. 216, 267, quoted in 9 Wigmore on Evidence, 3d ed., §2583n).

In the present case it is particularly appropriate that the Court take notice of facts which it would be practically impossible for appellee to prove in the ordinary manner. One can imagine the success with which appellee would meet if it attempted to take proof under letters rogatory to a Russian court as to the utilization by the government of the patriarchate as an instrument of propaganda! As Mr. Justice Van Voorhis said (Jurisdictional Statement, p. 111):

> "When the case of *Kedrovsky* v. *Rojdesvensky* was in the courts, it evidently did not suit the purposes of the ruling power in Russia to furnish evidence to establish the lack of canonicity of the group which succeeded in that lawsuit. That circumstance should result in scepticism concerning the present assertion, that since the extinction of the winning faction in that action 'the Patriarchal Church functioned effectively and without restraint.' As stated by Lord Mansfield in *Blatch* v. *Archer* (Cowp. 66): 'It is certainly a maxim that all evidence is to be weighed according to the proof which it was in the

power of one side to have produced and in the power of the other to have contradicted (quoted in II Wigmore on Evidence, section 285). It does not exceed the limits of judicial notice to recognize that in this action defendant Benjamin Fedchenkoff, like Kedrovsky in the prior action, had access in Russia to whatever helpful documentary or other evidence respondents needed, whereas the door to obtaining similar proof in plaintiff's behalf was undoubtedly closed, as it was to Archbishop Platon in the prior case. Were it to suit the purposes of the ruling caste in Russia at some future some time to disavow the authority of Archbishop Benjamin, there is little doubt that the lack of it could be demonstrated as effectively as has been accomplished in the case of Archbishop Kedrovsky, who appeared to possess the tokens of investiture when he was in court a quarter of a century ago."

F. If the administrative control by the patriarchate of the properties dedicated to the use of the old diocese is based on rules having the force of contract, as pleaded in the amended answer (R. 3), the contract has been rendered impossible of performance on the part of the Church located in Russia because the polity of that part of the Church, by force of the civil law, has become congregational.

The governmental decree referred to is that of October 1, 1929 (*supra*, p. 34). On the status of the higher church authorities Dr. Gsovski says:

"It is true that the statutory law states that 'religious associations may organize local, All-Russian, or All-Union conventions and conferences', but it is only allowed 'by special permission issued for each case separately' by the soviet authorities. Again, such conventions and the executive bodies elected by them have fewer rights than the local religious associations * * * It is especially emphasized that *their decisions and decrees cannot be enforced and are*

subject to the good will of the members of the congregation. Ecclesiastical authorities have in the eyes of soviet law no jurisdiction over the parishes with regard to religious properties • • • Thus whenever the soviet law uses the term 'religious association' only the isolated parishes are meant. *Only a separate parish has some kind of status in Soviet Russia.* • • •"

The Legal Status of the Church in Soviet Russia, 8 Fordham L. Rev., 9.

The trial court's attention was called specifically to the governmental decree before mentioned and its text was read into the record (R. 58-59). No proof to the contrary was offered. It must, therefore, be presumed that the Church of Russia, at any rate within the territorial limits of Russia, is congregational in polity by virtue of Soviet law. Since unquestionably the most numerous portion of the Russian Church is located in the Republic of Russia it is obvious that the contract pleaded by Metropolitan Benjamin in his amended answer has been rendered impossible of performance. The patriarchate cannot claim that the Russian Church is a world-wide religious association, of the associated or connectional type, if the preponderant majority of the members, under the civil law of their place of residence, are entitled to insist on a congregational polity.

This change in the polity of the Church of Russia located in the Russian Republic is an additional reasonable basis for the legislation here in question.

POINT II.

Neither the granting of a charter to a religious corporation nor the regulation, within reasonable limits, by the state of the conditions upon which the corporate property is to be held and administered, violates the principle of the separation of Church and State.

A. A state may validly grant a charter to a religious corporation.

Conceivably the principle might have originally been pushed so far as to forbid the creation of religious corporations. Indeed this was what actually happened in Virginia, the birthplace of the First Amendment. Consequently even today a religious corporation cannot be formed under the laws of Virginia, but the constitution and statutes provide for religious trusts (Va. Const., 1902, art. 59; Va. Code 1950, tit. 57, art. 2).* A similar situation exists in West Virginia (W. Va. Const., 1872, art. VI, sec. 47; W. Va. Code of 1949 §§ 3488 *et seq.*)

At an early date, however, this Court came to the conclusion that

> "the free exercise of religion cannot be justly deemed to be restrained by aiding with equal attention the votaries of every sect to perform their own religious duties, or by establishing funds for the support of ministers, for public charities, for the endowment of churches, or for the sepulture of the dead. And that these purposes could be better secured and cherished by corporate powers, cannot be doubted by any person who has attended to the difficulties which surround all voluntary associations. While, therefore, the legislature might exempt the citizens from a compulsive attendance and payment of taxes in support of any particular sect, it is not perceived that

* Agencies of religious bodies may be incorporated (cf. *Jordan v. Richmond Home*, 1907, 106 Va. 710, 717-718).

> either public or constitutional principles required the abolition of all religious corporations."

Terrett v. *Taylor*, 1815, 9 Cranch 43, 49, per Story, J.

In that case the Bill of Rights of Virginia had declared that "all men are equally entitled to the free exercise of religion according to the dictates of conscience" yet Mr. Justice Story said (at p. 49):

> "* * * it is difficult to perceive how it follows, as a consequence, that the legislature may not enact laws more effectually to enable all sects to accomplish the great objects of religion by giving them corporate rights for the management of their property, and the regulation of their temporal as well as spiritual concerns. * * *"

In the footnote below* will be found references to the statutory provisions for incorporation of religious corporations under the laws of the various states and territories.

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* *Alabama* Code 1940, tit. 10, art. 3; *Alaska* Comp. L. 1949, §§36-4-1 *et seq.*; *Arizona* Code, Cum. Supp. 1949, §§53-401 *et seq.*; *Arkansas* Stat. 1947 sec. 64-1301 ("benevolent" purposes construed to include religious according to information received from office of Secretary of State); *California* Corps. Code §§9200 *et seq.* as amend. 1949 c. 1391; *Colorado* 1935 Stats. c. 41 art. 14; *Connecticut* Gen. Stat. 1949 c. 257; *Delaware* Rev. Code 1935 c. 68; *Florida* Stat. c. 617; *Georgia* Code tit. 22, c. 22-4; *Hawaii* Rev. L. 1945 tit. 21 sec. 8311; *Idaho* Code c. 11; *Illinois* Rev. Stat. 1951 c. 32 §§164 *et seq.*; *Indiana* Stat. §§25-1527 *et seq.*; *Iowa* Code tit. 19 c. 504; *Kansas* Gen. Stat. 1949 §§17-1701 *et seq.*; *Kentucky* Rev. St. 1948 §§273.010 *et seq.*; *Louisiana* Rev. Stat. 1950 §12-111; *Maine* Rev. Stat. c. 53 §§1 *et seq.*; *Maryland* Code, 1947 Cum. Supp. art. 23 §§275 *et seq.*; *Massachusetts* L. tit. XI c. 67; *Michigan* Comp. L. 1948 §§450.178 *et seq.*; *Minnesota* Stat. c. 315; *Mississippi* Code 1942 §§5350 *et seq.*; *Missouri* Rev. Stat. art. 10 §5439; *Montana* Rev. Codes 1947 c. 14; *Nebraska* Rev. Stat. Supp. 1949 c. 21 art. 8; *Nevada* Comp. L. 1929 §§3215 *et seq.*; as amend. Stats. 1941, 398; *New Hampshire* Rev. L. tit. 24 c. 272; *New Jersey* Stat. tit. 16 (c. 15-A similar to New York statute here involved, as originally enacted); *New Mexico* Stat. 1941 §§54-1306 *et seq.*; *New York* McKinney's Cons. L. v. 50; *North Carolina* Gen. Stat. §§55-1 *et seq.*; *North Dakota* Rev. Code 1943

New York has from an early date been liberal in granting charters for religious corporations both by special act and under general statutes (cf. L. 1784, c. 18; L. 1813, c. 60; L. 1822, c. 187; L. 1863, c. 45; L. 1867, c. 265; L. 1873, c. 633, L. 1886, c. 16). The Religious Corporations Law provides for incorporation of religious corporations connected with over thirty of the principal denominations or independent.

The legislature has not hesitated to concern itself with minute details of church government, such as that the annual elections of an incorporated Episcopal parish, if no date therefor be fixed by law, shall be held on the Monday next after the first Sunday in Advent or on the Tuesday next after the second Sunday in January as may be determined by vote of the vestry (Rel. Corps. L. §43). And in the middle of the last century the legislature was the center of a heated controversy, widely debated and publicised, over the proposed repeal of an act limiting the electoral franchise in Trinity Parish to its own communicants rather than, as originally, all Episcopal communicants of the City of New York (Trinity Church Pamphlets).

After the union of the Methodist Episcopal Church, the Methodist Protestant Church, and the Methodist Episcopal South Church to form The Methodist Church, the legislature enacted that all religious corporations connected with the three merging bodies should eliminate from their respec-

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c. 10-08; *Ohio* Page's Gen. Code tit. 9 §§8623-97 art. div. 6 c. 4, *Oklahoma* Stat. 1951 tit. 18 c. 14; *Oregon* Comp. L. tit 77 c. 4 art. 2; *Pennsylvania* Purdon's Stat. tit. 15 c. 49 A art 2 sec. §2851-214; *Rhode Island* Gen. L. 1938 tit. 15 c. 16 art. 3; *South Carolina* Civil Code tit. 38 c. 158 art. 3; *South Dakota* Code 1939 c. 11.15; *Tennessee* Michie's Code 1938 §§4146 *et seq.*; *Texas* Vernon's Rev. Civ. Stat. 1925 art. 1396 *et seq.*; *Vermont* Stat. Rev. 1947 §6022; *Washington* Remington's Rev. Stat. §§3863 *et seq.*; *Wisconsin* Stat. 1949 c. 187; *Wyoming* Comp. Stat. 1945 c. 44 art. 7, Cum. Supp. c. 44, art. 10.

tive names the words "Episcopal", "Protestant" or "South", as the case might be (Rel. Corps. L. §321, subd. 1).

The constitutionality of legislative provisions such as these has not been challenged. It appears to have been taken for granted over a long period of years that the state is not intruding into a forbidden field when it grants the corporate franchise to religious corporations and attaches conditions either in the original charter or by subsequent amendment, at least within reasonable limits. An example of such amendment is that of the charters of religious corporations of the Eastern Confession incorporated under the Religious Corporations Law. Originally that law provided that the trustees of such corporations should be the Envoy Extraordinary and Minister Plenipotentiary and Consul General of Russia to the United States ex officio.* For obvious reasons this provision had to be amended, so that the law now provides for trustees to be selected according to the by-laws of the particular church or the rules and usages of the denomination to which that church belongs (Rel. Corps. L. §96). Of course amendments in respect of non-controversial details such as have been mentioned are not likely to lead to the raising of constitutional issues. These examples do, however, illustrate the point that once it is conceded—as it must be—that a state may validly incorporate a religious corporation, so far as the First and Fourteenth Amendments are concerned, then the state may be called on from time to time to regulate or supervise the exercise of the corporate franchise. Such state action may be through either the legislature or the courts. The question is: what are the limits of such action under the First and Fourteenth Amendments?

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* L. 1871, c. 12, §1, later Rel. Corps. L. of 1895, §91, Rel. Corps. L. of 1909, §91.

B. In granting the corporate franchise to a religious society a state may validly provide for or against denominational control.

Under the early statutes of New York providing for the incorporation of religious societies it was held that religious corporations were free from denominational control (*Robertson* v. *Bullions*, 1854, 11 N. Y. 243; *Baptist Church* v. *Witherell*, 1832, 3 Paige 296; *Bellfort* v. *Tooker*, 1859, 29 Barb. 256, aff. *sub. nom. Petty* v. *Tooker*, 1860, 21 N. Y. 267). In 1875 the legislature imposed denominational control on all religious corporations (L. 1875, c. 97, §4, now Rel. Corps. L. §5). The same result has been reached in most jurisdictions by judicial decision following *Watson* v. *Jones*, 13 Wall. 679. The rule of denominational control, it is submitted, is not imbedded in the federal constitution. Whether the property of religious corporations is to be administered subject only to the laws of the state and by-laws of the corporation or also subject to the rules of the denomination with which the corporation is connected, is a question of state policy which may be determined by the legislature free of restraint under the First Amendment as read into the Fourteenth. It would seem that whether the state provides for or against denominational control of religious corporations freedom of religion is not abridged. If under the law of the state a religious corporation is free from denominational control and administers its property in violation of the rules of the denomination the spiritual society with which the corporation is interrelated may be disciplined by the governing organs of the denomination (*Robertson* v. *Bullions*, 11 N. Y. at p. 264).

If the foregoing reasoning is correct it was competent for the legislature to abrogate the rule of denominational control to the extent reflected in Article 5-C.

C. The modification of the rule of denominational control effected by the enactment of Article 5-C was reasonable under the circumstances.

On the whole the rule of denominational control has worked well and is in the public interest. But it does not fit all cases *e.g.* the unique situation presented here by the justifiable break in administrative ties between the old diocese and the patriarchate, the unjustifiable demands for "loyalty" to the Soviet regime and the utilization of the patriarchate as an instrument of Soviet propaganda. Under these circumstances it was reasonable, and therefore competent, for the legislature in the public interest to prescribe that the denominational control of the religious corporations to which Article 5-C was made applicable should be exercised by the *Russian Church in America*.* So far as existing corporations were affected the enactment was an amendment of their corporate charters all of which had been granted subject to the reserve power (N. Y. Const. Art. X, sec. 1).

D. Even if it is held that the rule of denominational control is imbedded in the federal constitution a state may validly inquire into and pass on the competence under their own rules of the denominational organs attempting to exercise such control.

The validity of such investigation and determination, when made by the judicial arm of the state government, will first be considered.

Watson v. *Jones* is usually cited for the rule that the civil courts accept as conclusive the adjudications of church tribunals on ecclesiastical questions, including even the

* For an example of denominational control of a parish corporation by the *Russian Church in America* being enforced by a civil court, see *Russian-Serbian Holy Trinity Orthodox Church* v. *Kulik*, 1938, 202 Minn. 560.

question of the tribunal's jurisdiction. However, the courts have had to recognize some qualifications of the broad expressions used in *Watson* v. *Jones*.

> "We think it doubtful whether the Supreme Court [in *Watson* v. *Jones*] intended to announce a principle without limitation or exception. It seems probable that when the occasion arises it will align itself with the courts which have limited the application of its announced principle. See 24 L. R. A., N. S., 698."
>
> *Reformed Bethanien Church* v. *Ochsner*, 1948, 72 So. Dak. 150, 165.

> "• • • it may well be that the civil courts will interfere in a case where it is shown that the controlling authority of a general church has indisputably abandoned fundamental and characteristic doctrines and belief to the diversion of church property from the objects and purposes of the implied trust to which it is subject. Mack *v.* Kime, 129 Ga. 1, 58 S. E. 184, 24 L. R. A., N. S., 675; 23 R. C. L. 449."
>
> *Trustees of Pencader Presbyterian Church* v. *Gibson*, 1941, 19 Del. Ch. Ap. 375, 391.

For cases where the courts have refused to be bound by the action of church bodies, see

> *Grupe* v. *Rudisill*, 1927, 101 N. J. Eq. 145, 165;
> *Wallace* v. *Trustees of General Assembly*, 1902, 201 Pa. 292;
> *Jennings* v. *Scarborough*, 1894, 56 N. J. L. (27 Vroom) 401.

When it is clear that the ecclesiastical tribunal lacked jurisdiction, its ruling is not binding on the civil court, e. g., if a church court imposed a death sentence for murder (*Watson* v. *Jones*, 13 Wall. at pp. 732-733).

In the case of religious trusts the state law is supreme.

> "* * * the law, whose supremacy, over all ecclesiastical rules and regulations, when rights of property are concerned, is not to be questioned."

Krauczunas v. *Hoban*, 1908, 221 Pa. 213, 225.

In the case last cited a Pennsylvania statute required lay control of church property, although the rules of the Roman Catholic Church required the property to be held by the bishop. The court compelled the bishop to convey the parish property to the congregation. When the bishop sought to evade the effect of this decree by laying an interdict on the congregation, who were thus compelled to use a non-Catholic minister for their services, the court refused to enjoin such use of the property (*Novickas* v. *Krauczunas*, 1913, 240 Pa. 248).

In the present case, in the absence of a statute, the New York courts could validly inquire into the question whether, under the political conditions existing in Russia, the patriarchate was competent to make a decision as to who should administer the American properties.

The rule of *Watson* v. *Jones* has not prevented the civil courts generally from passing on the competence of supreme church judicatories to adjudicate questions of ecclesiastical law or polity. For example, the powers of the supreme organs of the Presbyterian Church U. S. A. and the Cumberland Presbyterian Church under their respective constitutions to take the various proceedings to effect a merger of those two bodies was inquired into and passed on by the courts of several jurisdictions.*

As has been pointed out by a leading writer on the subject, the refusal of the courts to inquire into the com-

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* *Ramsey* v. *Hicks*, 1910, 174 Ind. 428; *Brown* v. *Clark*, 1909, 102 Tex. 323; *Mack* v. *Kime*, 1907, 129 Ga. 1; *Wallace* v. *Hughes*, 1909, 131 Ky. 445; *Permanent Committee* v. *Pacific Synod*, 1909,

petence of church judicatories, in suits involving religious trusts, would subject the beneficiaries to ecclesiastical tyranny (Zollman: American Church Law, 1933, § 53). At any rate it is submitted that the question whether or not in a given case such inquiry is to be made is one of state law and is not affected by the provisions of the federal constitution.

E. By laying down a rule in advance for the guidance of its citizens the legislature promoted public peace and order and discouraged litigation.

The courts of New York, from the time of the Russian Revolution to the date of the enactment of Article 5-C, had been plagued with lawsuits arising out of the situation of the Church of Russia.*

If under the First Amendment as read into the Fourteenth a state through the judicial arm is competent to

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157 Cal. 105; *First Presb. Ch.* v. *First Cumberland Presb. Ch.*, 1910, 245 Ill. 74; *Fancy Prairie Cong.* v. *King*, 1910, ibid. 120; *Pheasant Grove Cong.* v. *Riley*, 1911, 248 id. 604; *Sanders* v. *Baggerly*, 1910, 96 Ark. 117; *Harrison* v. *Cosby*, 1911, 173 Ala. 81; *Morgan* v. *Gabard*, 1912, 176 id. 568; *Carothers* v. *Moseley*, 1911, 99 Miss. 671; *First Presb. Ch.* v. *Cumberland Presb. Ch.*, 1912, 34 Okla. 503; *Hayes* v. *Manning*, 1914, 263 Mo. 1; *Missouri Coll.* v. *Guthrie*, 1914, ibid. 32; *Duvall* v. *Synod*, 1915, 8 circ., 222 Fed. 669, aff'd *sub nom. Shepard* v. *Barkley*, 1918, 247 U. S. 1; upheld the merger. *Landrith* v. *Hudgins*, 1908, 121 Tenn. 556, and *Boyles* v. *Roberts*, 1909, 222 Mo. 613; held the merger invalid.

* E. g. *Nemelovsky* v. *Rykhloff*, 1919, 1st dept., 187 App. Div. 290; *Kedrovsky* v. *Archbishop and Consistory*, 1921, 1st dept., 195 id. 127; *Kedrovsky* v. *Archbishop and Consistory*; *Kedrovsky* v. *Rojdesvensky*, 1924, 214 id. 483; *Kedrovsky* v. *Rojdesvensky*, 1926, 242 N. Y. 547; *Kedrovsky* v. *Archbishop and Consistory*, 1926, 218 App. Div. 121; *Same* v. *Same*, *Appeal of Kryzanovsky*, ibid. 124; Same *v.* Same, *Appeal of Gates, Receiver*, 1927, 220 id. 750; *Kedrovsky* v. *Russian Catholic Church*, 1928, 249 N. Y. 75; *Same* v. *Same*, ibid. 516; *Nikulnikoff* v. *Archbishop and Consistory*, 1932, Sup. Ct. N. Y., 142 Misc. 894; *Waipa* v. *Kushwara*, 1940, 2nd dept., 259 App. Div. 843; *Same* v. *Same*, 1940, 283 N. Y. 780. In addition there were suits in the lower courts (R. 194; also cf. *Kedrovsky* v. *Rojdesvensky*, 1924, App. T. 1st dept., 123 Misc. 159).

investigate facts and make a determination as to the proper administration of a religious trust in case of a particular dispute, the state has like competence through the legislative arm to investigate, make findings of fact and lay down a rule for the administration of a general class of such trusts. *The action of the legislature in so laying down a general rule as a guide to its citizens is no more an intrusion into the forbidden field of religion than the action of the courts in adjudicating the particular disputes which are submitted to them.* If the courts were to refuse to take jurisdiction of the disputes because of a supposed constitutional restraint, the peace and order of the state would be disturbed; possession would be ten points of the law; whoever first barricaded himself in a church building could not be ejected; the administration of religious trusts would be in chaos.

Just as it is necessary, in the interest of public peace and order, for the judiciary to act in particular cases affecting the administration of religious trusts, so it is a reasonable exercise of the police power for the legislature to lay down a rule for a general class of cases.

This is in itself a reasonable basis for the legislation here involved. It would be an unreasonable hardship to require the members of every *Russian Orthodox church* (as that term is defined in §105 of the Act), whenever an attempt was made to seize control of its property in the name of the patriarchate, to dig up and assemble the evidence required to convince the court that the patriarchate was not the proper administrator. The legislature has once and for all made the investigation and determination which will avoid litigation in the future.

Whether the legislature has encroached on the field of the judiciary under the state constitution is not a federal question.

POINT III.

Religious liberty is promoted, not abridged, by the legislation.

If the patriarchate is held to be in perpetual control of the properties which were dedicated to the use of the diocese prior to April 2-4, 1924, and no legislature or court can inquire into the propriety of such control, then truly the great body of worshippers for whose benefit these properties were dedicated are hampered in the exercise of their religion; for they will forfeit their traditional shrines rather than bow their necks to Stalin. Conversely, if it is held that the legislatures and courts may validly protect them in the enjoyment of their accustomed places of worship, their freedom of religion is preserved.

It would amaze Madison and Jefferson to learn that the doctrine of religious liberty was being invoked to help a foreign bishop to seize control of American church property! There was widespread opposition in the colonies, even among Anglicans, to receiving English bishops, on account of their close connection with the English government (1 Stokes: Church and State in the United States, pp. 231-240).

It was the existence of the state controlled churches in Europe and in various colonies that led to the cry for religious freedom. The political independence of America was soon followed by the independence of the American churches.

"From being *appendages of national churches in Europe,* they now become national churches themselves in this new Empire" (from a letter of Rev. Edward Livingston, quoted in Stokes, *op. cit.,* vol. I, p. 720). The Dutch Reformed were connected with the Church in Holland

(Stokes, *op. cit.*, vol. I, pp. 749-752; *cf. Miller* v. *Gable*, 1845, Ct. Ch., 2 Denio 492, 511). Other churches with European connections were the German Reformed (1 Stokes, p. 748), Lutherans (*ibid.*, p. 765), Moravians (*ibid.*, pp. 774-775), as well as, of course, the Episcopalians. All of these became independent after the Revolution.

It is true that the Church of England consecrated bishops for the American Episcopal Church. Even so, if the rule of denominational control had been pushed to the extreme point contended for by appellants here, a single parishioner could have insisted on the continuance of the ancient connection.

> "* * * Public opinion would not have borne it [such a result]. Yet every Episcopal congregation in America had been founded on the basis of that connexion, and our independence in other matters had raised no unanswerable objection to its permanence, especially, after the Bishop of London had procured an act of Parliament to dispense with engagements by the American Episcopal clergy that would have interfered with their political allegiance. It is true that the separation was effected with the assent of the mother church; but it was the parishioner here, and not the church abroad, whose consent was necessary to a dissolution of his ecclesiastical relation, in order to impair his civil rights. Besides, the consent of the mother church was only formal, and given to the separation as to a measure which she could not prevent. She indeed conferred the episcopate, and thus secured a continuance of the apostolic succession to the American Episcopal Church; but that might have been had from the nonjuring bishops in Scotland, as it was by Doctor Seabury, or from the Danish Episcopal church, which indeed offered it on terms of signing the thirty-nine articles of the church of England, with the exception of their political parts.

> Had the offer been accepted, there would have been an adverse withdrawal of ecclesiastical allegiance—in principle the very case before us—and it will not be pretended that the majority of an Episcopal congregation here would not have been at liberty, in that event, to form a connexion with an independent Episcopal church government, without forfeiting the interest of each in the church property."
>
> *Presbyterian Congregation* v. *Johnston*, 1841, 1 W. & S. (Pa.) 9, 39.

In other words, the rule of denominational control is not so inflexible as not to yield to political changes (*cf.* Zollman: American Church Law, rev. ed., 1933, p. 239).

When the framers of the federal or state bills of rights planned for religious liberty in this country it is not likely that they were concerned with preserving the canonical rights of the Bishop of London to exercise administrative control of the Episcopal parishes.

It is conceivable that even the Church of Rome in dire necessity might need legislation of the character here involved to protect its properties here. A Pope, seized and drugged by tools of the Kremlin, might send here an apostolic delegate to demand from the Roman Catholic clergy "loyalty" to the Soviet regime. If under those circumstances the American bishops organized the Roman Catholic Church in the United States, as a temporarily autonomous body, would the legislatures and courts be forbidden to recognize it as the proper administrator of church properties here?

POINT IV.

The religious freedom of Metropolitan Benjamin is not affected by Article 5-C as construed and applied by the Court of Appeals.

He came here in 1933, organized a new patriarchal diocese (*supra*, p. 37) and must have set up its headquarters somewhere. Not until twelve years later did he make a move to gain admittance to the Cathedral. The privilege of presiding there could not have meant so much to him.

The legislation leaves him free to worship or preside in any church or cathedral where he may be welcome. He is even free to *worship* in the Cathedral, since appellee's charter requires that access to the Cathedral for worship shall always be free for all worshippers (R. 170). But he may not *officiate* in the Cathedral unless permitted to do so by appellee or its licensees. Freedom of religion does not mean freedom to deprive other people of their accustomed shrines. If it had not been for the erroneous judgment which forced appellee's licensees out of the Cathedral in 1926 the *Russian Church in America* would have had the enjoyment of the property during all these years and would still be there. Only by reason of the fact that by making some sort of a deal under which, in exchange for ordaining the schismatic John Kedroff, Benjamin got himself into the premises, is he able to say that the judgment appealed from is forcing him out. He had no right to be there in the first place.

If the defeated party in every suit over the administration of property dedicated to religious uses were able to upset the judgment by raising the cry of religious liberty, it would be futile for the courts to entertain such suits.

POINT V.

The Act does not "outlaw" or "suppress" the patriarchate in the state.

The compulsory mandate of the act applies only to religious corporations which fall within the definition of "Russian Orthodox church" contained in §105. A corporation organized as an independent unit, or founded since April 23, 1924, for the purpose of adhering to the patriarchal jurisdiction, is not affected by the mandate. There is no proof that any corporation affected by the act recognizes or is attempting to recognize Benjamin as ruling bishop.

It is nonsensical for appellants to say, as they do on page 22 of their brief, that Article 5-C is "a general statute outlawing a Church in its entirety". The patriarchate is at liberty to come into the state of New York and establish as many parishes or other ecclesiastical organizations as it may see fit. The statute merely prohibits it from seizing control of those properties which were dedicated to the use of the diocese prior to April 24, 1924. A religious corporation owning such property in the state of New York is a "Russian Orthodox church" as defined in §105. There is no proof that any member of a "Russian Orthodox church" as so defined objects to administrative control by the governing authorities of the *Russian Church in America* or desires that the patriarchate have such control. All that appears from the record is that appellee, which is a "Russian Orthodox church" within the definition, was ousted from its property as a result of the erroneous decision in *Kedrovsky* v. *Rojdesvensky* and that Metropolitan Benjamin got himself admitted into occupancy of the property by action of the admittedly wrongful occupant, appellant Kedroff. Two wrongs have been committed, the

ouster of appellee through a miscarriage of justice and the admission of Benjamin by the wrongful occupant. It is extraordinary that the statute and decision which right these two wrongs should be assailed as an abridgment of religious freedom and a violation of the principle of the separation of church and state. If there was such an abridgment and violation it took place in 1926 when the members of the *Russian Church in America* lost the enjoyment of their central place of worship. When Benjamin took over occupancy of the Cathedral in October, 1945, he defied the mandate of the statute.

POINT VI.

The Act does not compel a "transfer" of the Cathedral from one jurisdiction to another.

The Cathedral has always been, whether as parish church, diocesan see or administrative center of the *Russian Church in America,* an integral part of an identical body, whether diocese or autonomous district (regardless of the actual occupancy by the Kedrovsky family, an unfortunate but irrelevant incident). The corporations owning the Cathedral in succession were under the administrative control of the Most Sacred Governing Synod until 1917-1918, the patriarchate until April 2-4, 1924, and the *Russian Church in America* since then to the present. The statute merely determines that the *Russian Church in America* should continue in control of appellee and the judgment merely awards to appellee possession of its own property.

The fact that Benjamin is in actual occupancy is coincidental, but irrelevant. He is not in occupancy by license from the owner, but against its will. Occupancy was wrongfully wrested by John Kedrovsky from the appellee's

licensees, Platon and Turkevich, and wrongfully transmitted through the brothers Kedroff to Benjamin.

Appellants assert (brief p. 23) that a "statute that commands that a *church* 'shall recognize and be and remain subject to the jurisdiction and authority' of one church instead of another, of one archbishop instead of another, is unconstitutional on its face." The use of the word "church," as first appearing in the foregoing sentence, is disingenuous. The reference is to §107 (1). The "church" commanded by the statute is a religious corporation, not a spiritual body. The command is that a religious corporation which falls within the definition of *Russian Orthodox Church* in § 105 i.e. founded and established for the purpose and with the intent of adhering to and being subject to the administrative jurisdiction of the old mission or diocese before April 2-4, 1924, or the *Russian Church in America* since that date, shall recognize and be and remain subject to the jurisdiction of the governing authorities of the *Russian Church in America*. This is simply an elaboration of the command contained in §5 subjecting every religious corporation to denominational control. Appellants do not and cannot question the validity of that section but it also is in effect a command to a "church" (religious corporation) to recognize the authority of another "church". (ecclesiastical governing body of connectional denomination). §107 elaborates §5 by identifying the governing authorities to which the *Russian Orthodox churches*, as defined, shall be subject. If appellants' assertion were correct, no legislature and no court could command a religious corporation to be subject to a denominational authority; in other words, all church property would be administered subject to a congregational polity. This is hardly the result which appellants are seeking.

Appellants assert (brief, p. 23):

> "A statute that says that 'every' Russian Church and all its properties 'shall be and remain subject to the jurisdiction' of the metropolitan district and its elected archbishop, dispossesses the Patriarchal Church from all its properties, prevents any of its churches from existing in this state, and prohibits the free exercise of 'religion by that church.'".

As has already been pointed out, there is no proof of the existence in this state of any *Russian Orthodox church*, as defined, which now recognizes, or desires to recognize, the administrative jurisdiction of the patriarchate. There is no proof that any "Patriarchal Church" to which the statute would apply, exists in the state. Appellee is certainly not a "Patriarchal Church." The patriarchate has no properties from which it is dispossessed by the statute and has no churches which the statute prevents from existing. The paragraph last quoted from appellants' brief misconstrues the statute and assumes a state of facts not proven.

The next sentence, asserting that the statute prohibits the exercise of their religion by the "Patriarchal Churches" and compels them to accept the jurisdiction of a rival church, is equally senseless since no "Patriarchal Church" subject to the statute has been shown to exist.

Here a word may be said as to Article XV and §15 (3) of the Religious Corporation Law, providing for the Federated Orthodox Greek Catholic Primary Jurisdictions in America. Appellants say that the legislature selected the Patriarchal Church as one of the four "primary Orthodox jurisdictions in the state of New York" (brief, p. 35). What actually happened was that the heads of the Greek and Syrian jurisdictions here invited Metropolitan Benjamin to join them in forming an organization designed to bring together all of the Eastern Christians in a

federation. It was hoped at the time, 1943, that the breach between the patriarchate and the *Russian Church in America* would be healed. The writer of the letter quoted in the footnote* is an attorney in Buffalo who drafted the

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*FEDERATED ORTHODOX GREEK CATHOLIC
PRIMARY JURISDICTIONS IN AMERICA
(The Eastern Orthodox Church)

Office of the Chancellor
1064 Ellicott Square
Buffalo, N. Y.

Office of the Secretariat
10 East 79th Street
New York, N. Y.

January 16, 1948

Mr. Ralph Montgomery Arkush
General Counsel, Russian Orthodox
Greek Catholic Church of North America
15 Broad Street
New York, New York

My dear Ralph:

Having in mind our many conferences but particularly the one of day before yesterday on the subject of the Orthodox Church, I am sure that your struggle and mine are *One*, namely, *Unity* of *Orthodoxy*. We agree that its influence and longevity in America can only be expanded through Unity.

* * * * * *

There is only one way to begin this tremendous task: *Put the Federation in motion immediately. Reorganize it.* Then launch a joint campaign to raise funds. Erect a Federated, large-scale Institute of Theology and Learning. Let the English be its predominant language and, optionally, provide Chairs or Departments for Slavic, Syrian, Rumanian and Greek language training. This will enable the Clergy to read prayers in any language and celebrate Liturgy in any congregation. Thus the communicants, congregating, particularly in small cities, will consolidate their material means, concentrate their activities, rebuild and modernize their places of worship and make them attractive for the youngsters.

* * * * * *

In the name of Orthodoxy, which is holy to us, please, bear in mind: *The Federation cannot go forward without your Jurisdiction.* Orthodoxy cannot go forward without unification. Both are stopped at the track because of the unfortunate complications in your Jurisdiction. But both you and His Eminence Metropolitan Theophilus have expressed the desire to join the Federation. The sole obstacle was, and still is, your relations with Moscow. It is most unfortunate that the rift has not been bridged. To wait for bridging it, many years may pass. Meanwhile, prospects will disappear. These are the formative and most promising years. Failure to undertake big projects within their span may be fatal to the whole plan.

Therefore, personally and on behalf of millions who feel as I do, I urge you and His Eminence Metropolitan Theophilus that instead

legislation. It is generally admitted that without the adherence of the *Russian Church in America* the organization is practically a dead letter.

A word may also be said as to Governor Dewey. His salutation of Benjamin in a speech at Buffalo in 1943 (doubtless at some social function arranged by Mr. Phillies to inaugurate the Federated Jurisdictions) was referred to by the minority in the Court of Appeals (R. 295-296) and is cited by appellants in their brief (p. 35). That Governor Dewey holds a somewhat less flattering view of Benjamin today appears from the letter quoted in the footnote.*

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of thinking only in terms of isolationism or of the "whole loaf" and instead of remaining on the fence indefinitely, for the sake of Orthodoxy, please, be co-operative enough to prepare the way to overcome the apparent obstacles so that your Jurisdiction may come into the Federation. Your entrance will get its wheels rolling.

Please let me hear from you soon.

May Our Good Lord Jesus Christ endue you and your Hierarchs and Flock with the inspiration to take the initiative and lead the way in the path of Unity of the Venerated Orthodox Church.

Faithfully yours,

GEORGE E. PHILLIES
Chancellor of the Federated
Orthodox Greek Catholic Primary
Jurisdictions in America

GEP:ERR

* State of New York
EXECUTIVE CHAMBER
Albany

Thomas E. Dewey
Governor

December 22, 1950.

Archbishop Leonty
Russian Orthodox Greek Catholic Church
of North America
Holy Virgin Protection Procathedral
59 East 2nd Street
New York, New York

DEAR ARCHBISHOP LEONTY:

I have your gracious telegram conveying greetings from the Eighth All-American Sobor of Russian Orthodox Greek Catholic Church of North America. I was happy to be able to sign the Acts

POINT VII.

None of the other alleged errors assigned by appellants merits serious consideration.

A. The statute effects no transfer of property.

Appellants assert (brief, p. 41) that the "Mother Church has (apart from its religious and canonical interest) a vested *property* interest in the Cathedral and its use by it and its Archbishop as his *residence* and as the headquarters of the diocese." The simple answer to this is that the entire ownership of the Cathedral is vested in appellee. Its members consist of all of the worshippers of the *Russian Church in America*, just as the members of a municipal corporation consist of the citizens or inhabitants (*Werlein* v. *New Orleans*, 1900, 177 U. S. 390, 402).

The assertion (appellants' brief, p. 41) that the Mother Church built and maintained the Cathedral is contrary to the evidence. The St. Nicholas' Corporation built and maintained the Cathedral with funds derived from (*a*) local contributions (*b*) the Russian government (*c*) the Church of Russia. The contribution of the last named may have been nominal. In any event the source of the funds with which the Cathedral was built and maintained does not bear on the question of ownership (*Ferraria* v. *Vasconcellos*, 1863, 31 Ill. 1, 54). The dedication of property to religious use, by absolute gift to a religious corporation, vests no

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of the New York State Legislature in 1945 and 1948 which confirmed the members of the Russian Orthodox Greek Catholic Church in the possession of Saint Nicholas Cathedral in New York City, thus freeing it from the evil and sacrilegious influence of representatives of the Soviet.

I join you in looking forward to the time when all worshippers of the Orthodox Greek Church in the world will be free from the clutches of the Soviet Government.

Sincerely yours,

THOMAS E. DEWEY.

TED:RM.

property rights in the general body with which the corporation is connected (*Westminster Presbyterian Church* v. *Presbytery*, 1911, 142 App. Div. 855, 875; cf. *Girard* v. *Philadelphia*, 1868, 7 Wall. 1, 14; *Canovaro* v. *Brothers of Hermits of St. Augustine*, 1937, 326 Pa. 76, 88-96).

It is to be noted that in the papers connected with the transfer of title from St. Nicholas' Corporation to Archbishop Evdokim, which were introduced in evidence by appellants (Def. Ex. F), no suggestion was made that the "Mother Church" had a property interest in the premises.

The Church of Russia has no standing to claim that its property is being taken without due process. Under Soviet law it is not a juridical person, and has no right to own property (R. 168*). Under Soviet law the Church in Russia consists of the top hierarchy and local parishes that are independent of superior control (*supra*, p. 34). Nor is the Church of Russia a juridical person under American law (*cf. Pawlet* v. *Clark*, 1815, 9 Cranch. 292, 325, to the effect that the Church of England is not a corporation).

The statute as applied in this case merely confirms beneficial ownership of the Cathedral where it has always been since the parish church became a cathedral church *viz.* in the members of the old diocese and autonomous metropolitan district. The property has not been taken from anybody or transferred to anybody.

B. No federal question is presented by the fact that the action was commenced one day before the statute became effective.

As has been indicated under the preceding subheading, the statute affected no vested rights, but confirmed owner-

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* The Trial Court's attention was called to the decree of January 23, 1918, entitled "On separation of the Church from the State and the school from the Church" of which §12 provided "No ecclesiastical or religious society whatsoever, has the right to own private property. Such societies do not enjoy the rights of juridical persons" (See Gsovski, op. cit., 8 Fordham L. Rev. 10 n. 46).

ship of the properties where it had always been. The statute laid down a rule for the administration of the properties. The same result might be reached by the courts in the absence of the statute. There is no reason, therefore, why a court should not look to the statute for guidance in adjudicating an action pending when the statute was enacted.

Suppose that Benjamin had never intervened. Appellee would have recovered judgment against John Kedroff, but the title adjudicated in appellee would, nevertheless, have been subject to the provisions of Article 5-C (cf. *Westminster Presbyterian Church* v. *Trustees of Presbytery of N. Y.*, 1918, 222 N. Y. 642, where the judgment in ejectment directed by the Court of Appeals expressly provided that plaintiff's title was subject to the provisions of the Religious Corporations Law, including article 4 relating to Presbyterian Churches and containing a provision, §69 subd. 3, requiring denominational control).

As a matter of fact the amended complaint was not served on Kedroff until April 26, 1945, when the statute had become effective. Perhaps in that pleading appellee should have alleged facts showing that it was a *Russian Orthodox church* as defined in the statute and that the title sought to be adjudicated in it would be subject to the statute. The failure to do so, if a mistake, omission, irregularity or defect, might have been corrected or supplied at any stage of the action or appeals (cf. *Aktieselskabet etc.* v. *W. A. Kirk & Co.*, 1943, Sp. T. N. Y., 180 Misc. 979, 981) or, if a substantial right of any party should not be thereby prejudiced, must be disregarded (Civil Practice Act §105). Certainly no substantial right of appellants is prejudicial by disregarding the defect, if any, in the pleading. That appellee based its rights on the statute, as well as on the common law, was fully disclosed at the trial (R. 44). In

fact, appellee introduced the 1945 act in evidence (Pl. Ex. 15: act of April 10, 1945, not printed, off. R. 75).

C. The remarks of the Court of Appeals as to what would have been the disposition of the case in the absence of the statute have not the finality required for review in this Court.

The decision appealed from was based on the statute. If there had been no statute and the Court of Appeals had reversed the judgments of the lower courts and ordered a new trial, appellants would not have been in a position to bring the case to this Court by appeal or certiorari. If the statute is held unconstitutional, appellee is entitled to a new trial. This is especially important by reason of the fact that appellee had no opportunity to meet the constitutional issue in the trial court, where it was not raised by appellants until after the close of the trial and then only in connection with the construction of the statute.

D. The use by the Court of Appeals of the record in *Kedrovsky* v. *Rojdesvensky* was not material.

It is true that some of the circumstances surrounding the appointment of Platon by Tikhon, as narrated in Judge Conway's opinion (R. 257-258), do not appear in the present record. But they have no materiality. Appellants cannot question the validity of the appointment, since they themselves introduced into evidence the patriarchal decree purporting to dismiss Platon.*

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*Appellants are indignant (brief, p. 46, n. 30) over the reference to the written appointment of Platon, but the patriarchate, which presumably knows the facts, published the following:

> "* * * in September, 1923, Patriarch Tikhon, already informed of the position of the American flock, appointed Metropolitan Platon as Administrator of the North American diocese, relieving him of the administration of the diocese of Herson and Odessa in Russia."

Translation of extract from Journal of the Moscow Patriarchate, No. 7, July, 1950.

E. The defense of limitations was ruled on below.

The defense was argued fully in all of the courts below. Appellee contended that the statute was tolled until Kedrovsky's death in 1934 by the injunctions obtained by him against Platon and against appellee, respectively. Upon appellants' motion for reargument in the Court of Appeals, when for the first time they conceded that appellee had legal title, appellee made the additional point that occupation of the Cathedral by Kedrovsky was not adverse, but in subordination, to appellee's title and that, therefore, appellee, while not in occupancy, was seized of the premises within the statutory period.

Appellants admit (brief, p. 48) that their motion for reargument "specifically requested a ruling on this issue." Since their motion was denied it must be deemed that the court considered the defense without merit. The court was not obliged to make a specific ruling or write an opinion on the point.

Whether or not the defense has merit is not a federal question.

Conclusion.

The judgment should be affirmed.

Respectfully submitted,

RALPH MONTGOMERY ARKUSH,
Counsel for Appellee.

APPENDIX A.

LIST OF DATES.

		Referred to in This Brief on Page:
987	Russians converted to Christianity	10
1453	Fall of Constantinople; independence of Moscow Metropolitanate	10
1589	Patriarchate of Moscow recognized by Ecumenical Patriarch	10
1721-1917	Russian Church governed by Most Sacred Governing Synod	10
1793	Russian Mission founded in Alaska	2, 11
1870	Diocesan see moved from Sitka to San Francisco	11
1875	Denominational control of churches in New York provided for by statute	90
1893	Russian Orthodox congregation in New York	17
1899	Saint Nicholas congregation incorporated under Religious Corporations Law of 1895	17
	St. Nicholas' Corporation acquires land	17
1903	Parish church built	17
1905	Parish church consecrated	17
	Diocesan see transferred from San Francisco to New York: parish church becomes cathedral	11
1917-1918	Great Sobor in Moscow	10
	Tikhon chosen Patriarch	11

		Referred to in This Brief on Page:
1918	Confiscation of church property in Russia	11
	Kedrovsky v. *Russian Catholic Church* commenced	
1920		
Nov. 20	Patriarchal ukase No. 362	14
1922-1927	Central office of Patriarchal Church suppressed	12
1923		
April 29-May 9	Pseudo-Sobor of Renovated Church	12
June	Patriarch released from prison	13
Sept. 29	Patriarchal decree appointing Platon administrator of North American Diocese	15
Oct. 4	Renovated Church excommunicates Platon	15
	Renovated Church appoints Kedrovsky	15
1924		
Jan. 16	Ukase No. 28 dismissing Platon	16
March 29	*Kedrovsky* v. *Rojdesvensky* commenced	17
April 2-4	Sobor at Detroit	18
Oct. 27	Trial of *Kedrovsky* v. *Rojdesvensky* opens	24
Dec. 24	Decision of Special Term in *Kedrovsky* v. *Rojdesvensky*	24
1925		
Mar. 8	Patriarch Tikhon dies	13
April 8	Appellee incorporated by special act	6, 26
April 17	St. Nicholas' Corporation conveys to appellee	7, 27
April 23	First meeting of incorporators and trustees of plaintiff-appellee	27
Nov. 27	Opinion of Appellate Division in *Kedrovsky* v. *Rojdesvensky*	29
1926		
March 30	Decision of Court of Appeals in *Kedrovsny* v. *Rojdesvensky*	30
	Platon leaves Cathedral	31

		Referred to in This Brief on Page:
1927		
June 10	Central office of Patriarchal Church reopened: Sergius pledges loyalty to Soviet regime	33
1929		
Oct. 1	Soviet decree enforcing congregational polity	34
1933		
March 22	Metropolitan Benjamin appointed (ukase No. 29) Patriarchal Exarch in America	35
	Metropolitan Benjamin arrives in the U. S. and demands pledge of loyalty to Soviet regime	35
	Ukase No. 28 delivered to Platon	
Aug. 16	Ukase No. 61 recalls Platon, called schismatic	35
	Metropolitan Benjamin organizes new diocese	37
1934	Platon dies	38
June 29	Ukase No. 1005 appoints Benjamin ruling Bishop	36
Nov. 20-23	Sobor at Cleveland: Theophilus elected Metropolitan and Normal Parish Statutes adopted	38
	Kedrovsky dies; succeeded by son Nicholas Kedroff who occupies premises	32
1935	Interdict laid on Metropolitan Theophilus and his clergy	38
1937		
Oct. 5-8	Sobor in New York: statutes for administration of *Russian Church in America* adopted	38
1940	Court of Appeals refuses appeal in *Yonkers* case	38
1943	Sergius becomes Patriarch	36

		Referred to in This Brief on Page:
1944	Nicholas Kedroff dies: younger brother John, appellant here, occupies premises..	32
	Death of Patriarch Sergius; telegram of condolences of *Russian Church in America* to *Locum Tenens*.....	38
1945		
Jan.	Sobor at Moscow: Alexy elected Patriarch	39
	American delegates put down in Siberia and arrive too late for Sobor.....	39
Feb. 16	Patriarchal ukase proposing terms for lifting interdict on *Russian Church in America*	39
April 9	This action commenced.....	6
April 10	Act inserting Article 5-C became effective....	8
April 26	Amended complaint in this action served....	108
May 22-24	Bishops Council at Chicago rejects Patriarchal ukase of Feb. 16, 1945.....	40
July 10	Statement of Metropolitan Council explaining rejection	40
Sept. 7	Patriarchal ambassador Archbishop Alexis arrives in United States.....	42
Oct. 8	Appellant John Kedroff surrenders premises to Patriarchal Church and accepts reordination	42
1946		
Nov. 26-28	Sobor at Cleveland requests Patriarch accepts terms of autonomy.....	43
1947		
Jan.	Exchange of cables between Theophilus and Patriarch	44
	Metropolitan Benjamin intervenes in this action	7.

APPENDIX B.

RELIGIOUS CORPORATIONS LAW

ARTICLE 5-C [New]

RUSSIAN ORTHODOX CHURCHES

Sec.

105. Definitions.

* * * * * *

107. Government of incorporated Russian Orthodox churches; powers and duties of trustees.

* * * * * *

Article added by L. 1945, c. 693, eff. April 10, 1945.

§105. Definitions.

The "Russian Church in America", as that term is used anywhere in this article, refers to that group of churches, cathedrals, chapels, congregations, societies, parishes, committees and other religious organizations of the Eastern Confession (Eastern Orthodox or Greek Catholic Church) which were known as (a) Russian American Mission of the Russian Orthodox Church from in or about seventeen hundred ninety-three to in or about eighteen hundred seventy; (b) Diocese of Alaska and the Aleutian Islands of the Russian Orthodox Church from in or about eighteen hundred seventy to in or about nineteen hundred four; (c) Diocese of North America and the Aleutian Islands (or Alaska) of the Russian Orthodox Church from in or about nineteen hundred four to in or about nineteen hundred twenty-four; and (d) Russian Orthodox Greek Catholic Church of North America since in or about nineteen hundred twenty-four; and were subject to the administrative jurisdiction of the Most Sacred Governing Synod in Moscow until in or about nineteen hundred seventeen, later the Patriarchate of Moscow, but now constitute an administratively autonomous metropolitan district created

pursuant to resolutions adopted at a general convention (sobor) of said district held at Detroit, Michigan, on or about or between April second to fourth, nineteen hundred twenty-four.

A "Russian Orthodox church", as that term is used anywhere in this article, is a church, cathedral, chaptel[1], congregation, society, parish, committee or other religious organization founded and established for the purpose and with the intent of adhering to, and being subject to the adminitrative jurisdiction of said mission, diocese or autonomous metropolitan district hereinabove defined as the Russian Church in America. Added L. 1945, c. 693; amended L. 1948, c. 711, §1, eff. March 31, 1948.

[1] So in original. Probably should read "chapel".

* * * * * *

§107.1. Government of incorporated Russian Orthodox churches; powers and duties of trustees.

1. Every Russian Orthodox church in this state, whether incorporated before or after the creation of said autonomous metropolitan district, and whether incorporated or reincorporated pursuant to this article or any other article of the religious corporations law, or any general or private law, shall recognize and be and remain subject to the jurisdiction and authority of the general convention (sobor), metropolitan archbishop or other primate or hierarch, the council of bishops, the metropolitan council and other governing bodies and authorities of the Russian Church in America, pursuant to the statutes for the government there f adopted at a general convention (sobor) held in the city of New York on or about or between October fifth to eighth, nineteen hundred thirty-seven, and any amendments thereto and any other statutes or rules heretofore or hereafter adopted by a general convention (sobor) of the Russian Church in America and shall in all other respects conform to, maintain and follow the faith, doctrine, ritual, communion, discipline,

canon law, traditions and usages of the Eastern Confession (Eastern Orthodox or Greek Catholic Church).

3. The trustees of every Russian Orthodox church shall have the custody and control of all temporalities and property, real and personal, belonging to such church and of the revenues therefrom and shall administer the same in accordance with the by-laws of such church, the normal statutes for parishes of the Russian Church in America approved at a general convention (sobor) thereof held at Cleveland, Ohio, on or about or between November twentieth to twenty-third, nineteen hundred thirty-four, and any amendments thereto and all other rules, statutes, regulations and usages of the Russian Church in America. Added L. 1945, c. 693; amended L. 1948, c. 711, §2, eff. March 31, 1948.

APPENDIX C.

Translations of Extracts from Articles Published in JOURNAL OF THE MOSCOW PATRIARCHATE

No. 3, March, 1950

Church and Peace

(pp. 22-23)

Before speaking of what weapon is in the possession of, and how it will be used by the front of the friends of peace, it is necessary to answer the question: against whom does this front direct its tremendous forces?

The front of the advocates of peace opposes the front of world reaction. The core of the latter is formed by those hundreds of families who possess the world's riches, and those surrounding them in the guise of the closest servants and myrmidons of capital. These include those governments and classes who lead colonial wars, exploit the workers in the interest of gain and aspire by all means to world domination. For this particular purpose they prepare a new devastating war against the Soviet Union and the countries of the peoples' democracies. Developing the race for rearmament, they outdo themselves in the invention of bacteriological weapons, atom and hydrogen bombs and other means for the mass destruction of people.

It is not difficult to see that all these actions stem from people who have lost, not only the understanding of history, but conscience itself, not to mention other moral principles. It is true that in their ideological arsenal there can be found certain humanitarian and even Christian ideas, but they are applied only as a cover for a feral psychology. It is often revealed in the attempts of the ideologists of captalism to justify its policy and to find a way to save the dying order.

Indicating such a way, a certain William Fogt in his book, published in 1948, literally writes the following: "The

lessening of the population of Europe would be the greatest good in the matter of general peace". Or further: "From the point of view of all humanity the famine in China is, perhaps, not only desirable, but necessary". And finally: "the greatest advantage which Chile possesses is the high death rate of its population".

The best illustration of this cynical philosophy is the real policy of the government of the USA, which following upon the aggressive North-Atlantic block of governments, aspires now to create a new ring of satellite countries from Japan to Burma, and to arm them with cannon, with the avowed purpose of lessening the population in Asia. The American policy of giving "aid" to the little developed Asiatic regions speaks of the same thing. In the meantime, American philanthropists do not wish to sell India a million tons of wheat at moderate prices, aiming, apparently, at bringing the population of India to famine, instead of China, where this scheme has finally failed.

In short, every day brings more and more new facts and proofs of the humanity-hating policy of the front of reaction, which is manfully opposed by the progressive front of the fighters for peace.

What weapons does the front of the friends of peace have, and use, in differentiation from the instigators of war, and by what means does it move toward the established great purpose?

Elucidating these questions from a religious point of view, it must be said that such as is the purpose, such is the way to its realization. For instance, the purpose of unleashing a new war, masked on the outside by a hypocritical care for peace, betrays itself in methods of intimidation and terrorization of nations by new weapons of destruction, as well as the unasked interference of imperialists in the internal affairs of separate countries. It is also seen in the policy of attacks on the standard of living and the civil rights of the workers, as well as race discrimination, in the race for rearmament, in the "cold war" against the Soviet Union, in the propaganda of enmity and hate

toward countries of the peoples' democracies. Secret agreements against the USSR, China and other independent countries, lead to the same end. No less significant in this regard are the examples of subversive work in those same countries, as well as the persecution of the partisans of peace in the sphere of imperialistic influence.

On the other side, the high aim of the defense of peace is attained by its partisans by altogether different means. To these pertain, first of all, numerous congresses and conferences on peace, protests and demonstrations of the workers against the aggressive policy of reactionary governments, the condemnation of colonial wars and the race for rearmament, appeals for the ending of the "cold war" with the Soviet Union and the countries of the people's democracy, the collection of signatures in favor of peace, and many other means of organizing public opinion against the preparations of imperialistic powers for a new war.

For instance, here is the manifesto of the fighters for peace, functioning in France: "In the name of humanity and the right to life: we want our government to speak out for the declaration of the atomic bomb as outlawed; we want the United Nations to adopt immediately a resolution as to the destruction of stores of atomic bombs; we demand that everyone who threatens the world with atomic warfare, be looked upon as a military criminal; we call upon all government organizations to bring influence to bear upon their government in the name of the triumph of reason".

In one instance, calling upon their governments for reason, in another, the fighters for peace, refuse to transport weapons and troops, in a third—go on strike, refusing to transport weapons, in a fourth protest against annexation to the aggressive North-Atlantic block, in a fifth—present a petition to the United Nations Organization with a demand for the convocation of a conference of the four powers. And everywhere the forces of peace act honestly and openly, applying entirely democratic, morally legal

means of struggle, stemming from a reasonable will and calling also for reason.
(p. 25)

. . . . . .

Undoubtedly, to the one front of Orthodox Churches, defending humanity from a new war, are also attracted the faithful masses of Catholics and Protestants, who realize the oneness of the Christian ideal and the obvious departure from it of their "spiritual" leaders. For instance, in Paris, for more than a year already, there exists and develops its activity a Union of Christian-progressives. They write that "the time has come when it is necessary for Christians to go hand in hand with the communists, as they did at the time of the struggle with the German occupation. . . ."

. . . . . .

A. KRASHENINNIKOV.

No. 4, April, 1950

(p. 38)

The Roumanian Orthodox Church and the Defense of Peace. Epistle of the Holy Synod to the Orthodox Clergy and the Faithful and all Christians of the Roumanian Peoples Republic.

. . . . . .

While the enemies of peace, the instigators of war, threating freedom and the right to life of honest toiling people, enemies of love and agreement among nations, enemies of prosperity and happiness, are condemned by the Church according to the Gospel of the Holy Apostle Paul: "Know ye not that the unrighteous shall not inherit the kingdom of God? Be not deceived. . . . Nor thieves, nor covetous, nor drunkards, nor revilers, nor extortioners, shall inherit the kingdom of God" (I Cor. 6, 9-10).

In our time we see that the enemies of peace close up their ranks into a camp, which threatens the life of freedom-

loving nations and working people of the world. At the head of this camp are the rich of England and America.

• • • • • •

CHAIRMAN OF THE HOLY SYNOD

Justinian, Metropolitan of Hungary-Vlakhi, *locum tenens* of the metropolitanate of Moldava and the Patriarch of Roumania.

MEMBERS OF THE HOLY SYNOD:

Nicholas, Metropolitan of Ardyala
Phirmilian, Metropolitan of Oltenyi
Vassily, Metropolitan of Banga
Sebastian, Archbishop of Souchava
Joseph, Bishop of Rymnik and Ardjesha
Antim, Bishop of Bouzey
Theophilus, Bishop of Roman and Khoutschi
Andrew, Bishop of Arada
Antim, Bishop of Galatza
Nicholas, Bishop of Oradya
Nicholas, Bishop of Klouga
Caesar, Bishop of Constance

No. 4, April, 1950

Speech at the Meeting of the Soviet Committee for the Defense of Peace Dedicated to the Meeting with the Delegation of the Permanent Committee of the World Congress of the Partisans of Peace.

• • • • • •

(March 7, 1950)

(p. 32)

Upon returning from the Congress I made a series of reports in Moscow, Leningrad and other cities as to the results of the Congress and its resolutions. The monthly "Journal of the Moscow Patriarchate" from May 1949 on has given its pages for a special section "In the Defense of

Peace" in which are printed material and articles on this great problem of our times.

I expressed in the name of the Russion Church the conviction that the result of the struggle of the mass of mankind against the worthless group of instigators of war, thirsting for world dominance, is foreordained. "There are not and there cannot be on the earth—I said—any of the most cunning means that could defeat the artless strength of simple people, in whose hearts undying faith in truth is ineradicable".

METROPOLITAN NICHOLAS

No. 5, May, 1950

Church and Peace

(pp. 34-35)

Can it be possible that these words, spoken by Metropolitan Nicholas, are still not strong enough to instill abhorrence of the horrors and destruction of war! It would seem that there could not be found a man who would wish for a new war. But, unfortunately, there are such people —it is they who wish to turn the blood of humankind into a means for the acquiring of material advantages, the accumulation of gold.

But we believe that this road of the contemporary pharisees and bankers—the Anglo-American imperialists —will not meet with success and that they will not be able to push millions of simple people, who aspire to peace, want to live in peace, want to die in peace, into a brother-slaying war. Such is the spirit of the new times. Today the movement for peace is growing from one end of the world to the other. And it is impossible to find a force on

earth which could hold back the elemental desire of nations for peace and democracy. Therefore it is proper to quote here the words of the Metropolitan of Krutitsk Nicholas to the effect that the movement for peace is an "organic process, steadfast, growing. The new life marches with an inexorable step to replace the rotted old world, bearing within it the poison of malice and of hate".*

. . . . . .

ARCHIMANDRITE JONAH,
Chief Secretary, Holy Synod of the
Bulgarian Church.

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* See "Journal of the Moscow Patriarchate", 1949, No. 5, pp. 14, 16.

No. 5, May, 1950

War and Peace

(pp. 30-31)

. . . . . .

But just at this time from the front line of the capitalistic countries we are again threatened with atomic and hydrogen bombs. And again are justified the words of the psalm-singer: "I am for peace: but when I speak, they are for war" (Psalms 119, 7). They are preparing for war and conspire against the peaceful of the earth (Psalms, 34, 20), while, in reality, these are conspiracies against their own people, because any new war would be a great ordeal for all peoples.

. . . . . .

In fulfillment of this duty the representatives of the Orthodox Church at the All Orthodox Conference of July, 1948, in Moscow, sent an address to the Christians of the entire world. In this address is pointed out the obvious fact that the world is going through a tempestuous time

between the protestant West and the Orthodox East. The Orthodox East is inspired by the great foundations of peace on earth, while the capitalistic and imperialistic West prepares a new war. "Upon us, servants of the Orthodox Church—it says in the address—a horrible impression is made by the fact that the instigators of a new war bear the smell of a Christian—Catholic and Protestant—world. We deeply grieve that, instead of the voice of peace and Christian love, from the fortress of Catholicism—the Vatican, and from the nest of Protestantism—America, we hear the blessing for a new war and hymns of praise for the atomic bomb and similar inventions, intended for the destruction of human life". The address calls upon Christians for unity in the name of peace. "We stretch out a hand to all those who wish that man should be brother to man, and not an animal, and propose, having joined forces in brotherhood, to weaken the kindlers of a new catastrophe, servants of the dark power, for whom the great beginnings of Christian love of peace and brotherhood have long lost any meaning".

CYRIL, Metropolitan of Plovdiv.

("Church Messenger", organ of the Bulgarian Orthodox Church, 1950, No. 8-9)

No. 7, July, 1950

(pp. 18-19).

Future Pastors Carry Out their Duty

* * * * * *

The Russian Orthodox Church has spoken out for peace. Its head—the Most Holy Patriarch Alexy—in his epistle of March 3 of this year to all the Heads of autocephalous Orthodox Churches stated that the clergy of our Russian Orthodox Church has decisively placed itself on the side of the defense and affirmation of peace against the madness

of those holding a sword in their hands and aspiring to a cold and calcuated destruction of millions of human lives.

* * * * * *

Holy and clean, like crystal, is the thought of peace. It has infiltrated the hearts of all future pastors of the Church. Together with all the peoples of our country, we, the students of the Theological Academy and Seminary, are proud of the strengthening international authority of our Fatherland, which has become the bulwark of all progressive humanity in its heroic struggle for peace. Our Motherland has survived through all storms and dangers, guided by the vigilant pilot—her Captain—the great Stalin, and now she stands in the brilliance of fame and might, as a great power—the bulwark of peace and justice.

Warmly upholding the peace-loving policy of the Soviet Government, we wholly responded to the Proclamation of the Stockholm session of the Permanent Committee of the World Congress of the partisans of peace and believe that peace will triumph on earth, peace will conquer war!

The Students of the Moscow Theological Academy and the pupils of the Theological Seminary (signatures follow)

No. 7, July, 1950

(p. 16)

For Peace!

Speech at the mass meeting (140,000 persons) in defense of peace at Belgrade (Czechoslovakia) July 3, 1950.

* * * * * *

You well know that in the advance guard of the movement for peace there marches the great battle-hardened Soviet nation. The Soviet Union is the support and the hope of the movement for peace. Together with China, with the countries of the peoples' democracies, with millions of friends in all countries our country currently presents such an indestructible power, against whose might, like waves

against a rock, will break any inclinations of those who love to warm their hands at the fire of war's conflagration.

* * * * * *

Together with all the honest citizens of the entire world the Soviet people tell the instigators of war, the Anglo-American heads of imperialistic reaction: our wish for peace is inflexible; we, and all the nations marching with us, will fight for peace selflessly and heroically, to the end, to victory! And grievous will be the wrath, merciless the reckoning if you will dare to violate the peace won at high cost!

* * * * * *

METROPOLITAN NICHOLAS.

No. 8, August, 1950

(p. 22)

Church and Patriotic Duty.

More than five years have passed since our valiant people saved their liberty and independence in a most bitter war against the Hitler usurpers. But in our memory the remembrance is still fresh of the horrors we went through then: we remember the torrents of human blood, the barbaric destruction of beautiful cities, the devastation of grain-bearing fields; we will never forget how the enemy soiled our holy earth with his feet.

In strenuous toil our people is successfully healing its wounds, inflicted by the enemy; already the face of our land has reformed unrecognizably. But, toiling, building, our people never forgets the threat of a new war. We are all very well aware that the cultural and economic blossoming of our wonderful home-land—USSR, is not to the liking of all capitalists. They are arming madly, they are preparing death-dealing weapons against our peaceful country, against the countries of the peoples' democracy. From

threats they have gone to armed attack upon the Korean republic, their aerial pirates barbarically shoot the peaceful population of Korea.

• • • • • •

Pitirim, Archbishop of Minsk.

(p. 3)

No. 8, August, 1950

Address of the Patriarch and Synod of the Russian Orthodox Church to the Security Council of the Organization of the United Nations.

The Patriarch and Synod of the Russian Orthodox Church have addressed the following statement to the Security Council of the United Nations Organization:

New York, Lake Success
Security Council
United Nations

STATEMENT

of the Patriarch of Moscow and all Russia Alexy and his Holy Synod.

Experiencing the bloody events occurring in Korea, whose people endure the horrors of a blood-shedding war, when whole villages are swept away from the face of the earth by brutal bombings, when cities with their hospitals and schools are wrecked by bombs and death-dealing weapons, when are heard the moans of dying defenceless children, mothers and old people, when their blood cries to heaven—the Russian Orthodox Church, in my person and that of the Most Holy Synod, cannot remain indifferent to the sufferings of the Korean people and raises its voice in the defense of truth. It is unable not to express its compassion to the distressed country and [it] protests against American aggression in Korea.

It is clear to the whole world that there was interference in the internal affairs of the Korean people on the part of the United States of America, whose leaders widen their military activities more and more and aim to draw other governments into these actions against Korea.

The Russian Orthodox Church decisively condemns this interference and the inhuman extermination of the peaceful population of Korea taking place by the American air force. It insistently calls, in the name of Christ—the Savior of the world, for the cessation of violence and bombing, for the withdrawal of foreign troops from Korea and for the complete ending of the illegal war.

Preserving its faith in the strength and efficacy of the United Nations Organizations, called to preserve peace among nations, the Russian Orthodox Church, with an expression of deep sorrow in regard to the events in Korea, appeals to the Security Council, as the Central Organ of international peace, with a fervent plea to take all measures for the immediate peaceful settlement of the situation which has arisen.

ALEXY, Patriarch of Moscow and all Russia
Members of the Most Holy Synod:

NICHOLAS, Metropolitan of Krutitsk and Kolomen

JOHN, Metropolitan of Kiev and Galicia, Exarch of the Ukraine

GREGORY, Metropolitan of Leningrad and Novgorod

CORNELIUS, Archbishop of Gorky and Arzamask

JOHN, Archbishop of Molotov and Solikamsk

PANCRAS, Bishop of Volynsk and Roven

August 21, 1950, Moscow

"Izvestia" of August 23, 1950, No. 200

No. 9, September, 1950

(p. 6)

The First Step Toward Peace.

Only five years have passed since the silencing of the thunders of the second world war, and already we can see the horrors of a new extermination of the people. The source of general worry is the martial policy of the new pretenders to world domination, aspiring—so as to ease their task—to decimate the population of the terrestrial orb through the aid of atom bombs and other, previously unknown, weapons for the destruction of life. They are already testing their strength on the peaceful inhabitants of the Korean peninsula, aspiring to kindle the fire of a new world war.

But contemporary peoples, who have not forgotten the recent tornado of death, want to live in peace and quiet with each other and are applying all their strength to force the warmongers to give up their criminal intents. • • •

METROPOLITAN BARTHOLOMEW.

No. 8, August, 1950

The New Investment of the Church in the Matter of Peace.

• • • • • •

(p. 26)

It is well known that the collection of signatures to the Stockholm Proclamation turned into an authentic world referendum, obligated to express and organize the completely apparent superiority of the forces of peace and to oppose them to the bunch of warmongers, sowing death. But with the success of the referendum the opposition to it has also increased on the side of the instigators of war. With even more violence they have headed the hostile propaganda against the partisans of peace and have increased martial preparations. More than that, they have kindled the fire of war in Korea.

• • • • • •

[Article then refers to speech of Metropolitan Nicholas at conference of clergy in Czechoslovakia in July, 1950. Met. Nicholas was head of Russian delegation.]

(p. 27)

Having further shown the opposition of the peaceful ideals of humanity and of the schemes of the instigators of war, Metropolitan Nicholas exposed the attempts of the latter to base their humanity-hating policy in the unleashing of a new war, on the high authority of the Christian religion, whose defenders they declare themselves to be. "We must" he said "explain to all the faithful, that Christianity, as a religion of love and peace, does not need the defense of those who, with the aid of atomic bombs and deadly bacteria, are cold-bloodedly preparing to exterminate the population of an entire half of the terrestrial globe; who see in the law of motherhood a cause for economic crisis; who take an epidemic of the plague or of cholera to be a boon of nature, who, planning a new war, call the recent one an old fashioned war. There can be nothing in common with Christianity in people who do not carry out, but who monstrously pervert Christ's work, in the interests of their terrestrial kingdom".

A. KRASHENINNIKOV.

No. 9, September, 1950

(p. 8)

Signed with Heart's Blood

At the present time, not only in our great country, but throughout the world, people of good will are hastening to sign the Stockholm Declaration.

What has happened? Why is humanity so disturbed?

Why only recently we have passed through the test of a dreadful ordeal, have lived through the oppressive days of a lengthy merciless war and, it would seem, that the

very thought of war should forever disappear. Almost every one amongst us has offered someone near to him in sacrifice to war. The tears of sorrow and of pain have not dried as yet, the wounds are not yet healed, the destruction not yet liquidated, and already again and yet again is spoken the dreadful word "war".

What is the cause for this martial disturbance and who are these people contributing to its growth?

These people—are iniquitous money-grubbers who have amassed their wealth at the price of the tears and the blood of humanity. They are afraid to lose their gold, they tremble for it and are ready to drench the world in blood again, only to preserve their wealth. To them suffering and sorrow, blood and death—are nothing. Their aim—is to terrify harrassed humanity.

Remember recent events! The end of the world war. Fascist Germany is broken, conquered. Japan still fights. And at this moment atom bombs are dropped upon the cities of Japan. What is the purpose of this dreadful, mad act?

The purpose—is to intimidate for the future: be subject to us, live as we wish you to, otherwise we will shower you with these bombs. But the peoples do not want to live at the orders of blood-thirsty money-grubbers, they build life on new foundations, the foundations of God and humanity. And in response to the threat of a new war, a new battle, throughout the world there has risen a spontaneous movement for peace on the part of men of good will.

This movement is unified in the Permanent Committee of the partisans of peace which calls upon everyone to whom peace is dear, who enjoys life and work, who pities old people, who loves children—to sign the Declaration of this Committee and so bear witness to his wish for peace. It may be that some are thinking: what does a signature mean in the face of the evil will of the bloodthirsty and, at the same time, powerful people, can it help?—Yes,—we will answer—it can: that signature will unite hundreds of millions of people into one whole and will be a stern warning to the blood-thirsty beasts of prey.

Among the active fighters for peace we see clergymen, such as our Most Holy Patriarch Alexy, Metropolitan Nicholas of Krutitsk and Kolomen, such as the rector of Canterbury Cathedral, Dr. Johnson; we see the greatest representatives of the world of science; such as academician Joliot-Curie, writers, people of the most different professions, different skin color, different faiths, but united in one thought, one will and desire to fight for peace.

And that will, that union frightens the bloody criminals more than the mightiest weapon, for they understand what mean these signatures, collected throughout the world.

Then, do we sign the Declaration with ink? No, we sign with the blood of our hearts, the blood of those sufferings felt by our Motherland and each of us individually.

Our signature says: How long, Oh Lord? How long will evil people abuse Your name, how long will they doom humanity to new and yet new torments, how long will these evil people—bloody criminals—speak and act for the sake of their odious, mercenary aims?

May God bless all those who toil for the good of the world, and may the punishment of God fall upon the kindlers of war.

BISHOP VARLAAM.

No. 9, September, 1950

(p. 13)

Meeting of Three Patriarchs

On August 2-11 the Most Holy Patriarch of Moscow and All Russia, Alexy, made a trip to Tbiliss and Echmiadzin so as work out and sign, together with the Georgian Patriarch-Catholicos Kallistrat and the Patriarch-Catholicos of all Armenians George VI, an "Appeal of the Heads of the Russians, Georgian and Armenian Churches to the Christians of the entire world".

[Article goes on to describe meeting and church services and quotes excerpts from various speeches made, including the following made by Patriarch-Catholicos Kallistrat of the Georgian Church.]

"And this very goodness of Your [Patriarch Alexy] soul has bought You here and today, but only on another matter. It is known to all that our self-styled Christian western neighbors, kings of billions [dollars], rich from the sweat and blood of their lesser bretheren, find that there are now too many people on the earth and that their numbers should be lessened—either by means of the dissemination among them of poisoned items of prime necessity, by not taking measures against epidemic diseases, or by the use of atom bombs or other means of intimidation or extermination of the sons of God.

Your repeated speeches against these enemies of humanity, these disturbers of peace throughout the world, are known to all, but You are not satisfied with this: having overcome the difficulties of a long journey, You came to the old and hot city of Tbiliss so as to, together with the two heads of the Christian Churches, the Georgian and Armenian Patriarchs, living in our Great Union, enter into the battle against the enemies of peace, with the dynamic and efficient [weapon], sharper than any double-edged sword —the word of God, piercing even to the division assunder of soul and spirit, and of the joints and marrow, "and is a discerner of the thoughts and intents of the heart (Heb. 4, 12). * * * *"

Prof. N. Dogroussov.

No. 9, September, 1950

(pp. 43-44)

A Mission of Friendship

With the blessing of the Most Holy Patriarch Alexy a delegation of the Russian Orthodox Church was sent to the Patriarchate of Antioch. The delegation was headed by Metropolitan Gregory of Leningrad and Novgorod; he was accompanied by: Germogen, Archbishop of Krasnodarsk and Kouban and the Administrator of the affairs of the Moscow Patriarchate protopresbyter N. F. Kolchitsky.

(Article describes trip and quotes speech made by Metropolitan Gregory in the Cathedral at Damascus, as follows):

* * * *

"The world now, as it seems never before, is caught in a struggle between two opposite ways of life; on the one side, the sincere, broad and warm inclination of the great majority of the simple and honest people of the whole world toward the settlement of truth and a firm peace among peoples and, on the other side, the obdurate furious struggle of a selected clique, comparatively small, but risen to the top of wealth and power—for the preservation of personal, selfish interests, cloaked by plausible excuses, but undaunted by the most brutal means for the attainment of the indicated goal — the strengthening of its commanding position in the world. * * *"

ARCHBISHOP GERMOGEN

No. 10, October, 1950

(p. 21)

For Peace, Against War

* * * * * *

The fight of nations for peace has such power as cannot be resisted. Just recently, when the government of the USA has shifted from the preparation of aggression to the open act of aggression against the Korean people, the struggle for peace has risen to a higher level, has taken on more of the character of the masses. As witness to this is the fact that more than 500 million people have already signed the Stockholm Proclamation since the day of its publication.

Among millions of people hatred flares with new force against the Anglo-American warmongers, still wider spreads the collection of signatures in those countries where, up to now, the fight for peace had been poorly organized. The number of partisans of peace is growing notice-

ably in the USA and England—nests of imperialistic reaction.

"Hands off Korea!"—"Freedom and peace to nations!"—"Yankees, get out!"—with these words powerful columns of workmen go through the streets, people of different parties, different convictions and points of view, different faiths. The union of national masses against the danger of war knows no limitations of political or religious character.

In the USA itself many democratic organizations, Americans, prizing peace, state a decisive protest against intervention in Korea to President Truman and to Congress. "Not one man, not one weapon, not one plane for mass extermination! Forbid the atom and the hydrogen bomb by means of international agreement!"—they demand.

Trade union, women's, young people's, religious and other organizations demand the immediate removal of American troops from Korea, the giving to the Koreans of the opportunity to decide their problems, condemn the bankrupt fascist regime to Li Sun Man.

During this period the tempo of the collection of signatures to the Proclamation of the Stockholm session of the Permanent committee of the partisans of peace has signally increased. Two million Americans have already put their signatures under the Stockholm Proclamation.

The conference in defense of peace, which took place recently in Chicago, showed that representatives of the most various political stands are capable of uniting around a wide program, demanding the cessation of the "cold war", the outlawing of atomic weapons and the peaceful regulations of all problems between the USA and the Soviet Union.

The address of the conference in which it was indicated that "the American people must take its destiny in its own hands and, while there is still time, save the future of the country, which is travelling along the road to atomic war"—has found a warm response among all classes of American people.

In spite of the intensified persecution of the partisans of peace, more and more of the American workmen, farmers and members of the intelligentsia are signing the Stockholm Proclamation in defense of peace and are demanding the cessation of American aggression in Korea.

* * * * * *

The vast majority of the simple people of the USA share in these words, those who do not want war, insistently demand peace and international cooperation and activate more and more this just struggle against warmongers.

V. Bogatyerev.

No. 11, November, 1950

(p. 11)

Speech at the Second All-Union Conference of the Partisans of Peace

(Moscow, October 17, 1950)

* * * * * *

For the past year it [the Russian Orthodox Church] has participated in all possible ways and means in the struggle for peace: by special Patriarchal addresses to the faithful, speeches and sermons in the churches, wholehearted participation with all the citizens of our great Homeland in the signing of the Stockholm Proclamation, the condemnation through the press of American aggression in Korea, through articles in church and civil publications.

* * * * * *

All mankind must condemn aggression, no matter what its source, armed interference from without in the internal affairs of countries, and, in particular, must condemn the criminal, barbaric aggression of the USA in Korea.

* * * * * *

The Russian Orthodox Church, preaching peace and love, absolutely repudiates any interference of any government in the internal affairs of another country and asks that she be put in the front rank of those fighting for this holy right

of nations to the freedom of their lives. The bestial, bloody aggression of the USA in Korea must be stopped immediately.

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METROPOLITAN NICHOLAS

No. 11, November, 1950

(pp. 21-26)

Peace—to the World

(Second All-Union conference of the partisans of peace)

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In capitalistic countries a breach has long since formed between the simple working people and the rulers—imperialists. The simple man does not need war. He needs work. But there are those, corrupted by that same capitalism, for whom the ideal is wealth, making it possible to live without working. In capitalistic countries there are also people worn out by unemployment. They can be tempted by war. Especially for them posters are displayed in America: "Young yankees! The world—is an American planet. Choose, what is most to your taste: the tropical island of Guam or snowy Iceland, the Philippines or Western Germany, England or Greece. Dedicate yourself to the military profession—it will guarantee you an interesting, rich, adventurous life, travel in the company of friends".

With just such words the mad Hitler urged German youth to conquer the world.

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[Refers to German atrocities, then goes on:]

Unfortunately, today we can not only read about such atrocities but see them. A Korean documentary film has recorded forever "the results of the shooting of the peaceful population by the Americans: country roads, strewn with the corpses of men, women and children; a dead woman, on her knees there where the bullet reached her, her dress still smolders and smokes; small children—a boy and a girl—cry and struggle near the corpse of their mother; a babe in arms shot by a machine gun".

The people committing such atrocities, if in their soul there still smolder but one spark of human understanding, should shudder, seeing the work of their hands. Only ignorance can save them from the judgment of their own conscience. In the contrary situation—they are criminals and subject to the condemnation of society.

The fate of Robert Lewis is a vivid example of personal conscience: "Captain Robert Lewis, a flyer, who piloted a plane to Hiroshima and dropped an atom bomb on that city, has entered a monastery. He decided to atone with his whole life for the crime which he was forced to commit, without his knowledge, as he did not know what kind of weapon was on his plane and dropped by him" ("Partisans of Peace", No. 14, 1950, p. 18).

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[With reference to the collection of signatures to the Potsdam Proclamation (a peace manifesto):]

Only by slander can the simple man be convinced not to sign this Proclamation because even there were the ruling circles, as, for instance, in America, forbid the collection of signatures, subject the collectors to arrest, trials, throw them into prisons and even have recourse to murders, the signatures to the Potsdam Proclamation are growing.

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In one of the last speeches of A. I. Vishinsky at a meeting of the Political committee of the General UN Assembly data was given, published in the American press, of the growth of armament and the budget assigned to it (in dollars): "For the budget year 1950-1951 the USA plan to spend close to 50 billion, *i. e.* almost 50 times more than in 1938-1939" ("Izvestia" Oct. 26, 1950).

Such vast appropriations for armament cannot be understood otherwise than as active preparation for war.

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Honest people of the whole world must protest against war propaganda, against war hysteria, created and conducted by a bunch of blood-thirsty Anglo-American business

men, thirsting to warm their hands at the bonfire of a new war * * *.

* * * * * *

The representative of the Permanent committee of the All-world congress of the partisans of peace, the chairman of the English committee for the defense of peace, Mr. Crowther, attending the Second All-Union conference of the partisans of peace in the USSR, in his speech spoke of the fight of the English people for peace, at the same time condemning the policy of the English government which slavishly acts according to the directives of the United States.

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— A. SHAPOVALOVA

No. 12, December, 1950

(pp. 17-25)

About the Second World Congress of the Partisans of Peace.

A year and a half passed between the First World Congress of the partisans of peace and the Second.

During that time the Russian Orthodox Church appeared repeatedly both within its own country and on the arena of international church relations on questions of the struggle for peace and its defense.

Everyone knows the participation of the Russian Orthodox Church in the All Union Conference of the partisans of peace in August 1949. The honor to head the delegation of our Church and to appear on the tribunal of the conference in the name of the Russian Church fell to me. At the election of the conference I joined the Soviet committee for the defense of peace.

[Article goes on to recite activity of Church as follows:

October 2, 1949—Patriarch Alexy issues proclamation.

February, 1950—Metropolitan Nicholas goes to Czechoslovakia, makes speeches and attends meetings.

March, 1950—Patriarch Alexy sends appeals to all heads of autocephalous Orthodox churches.

March, 1950—As member of Soviet committee [see above] Met. Nicholas welcomes delegation of Permanent World Committee bringing message from that organization to Soviet government.

July, 1950—Met. Nicholas appears at conference of clergy of all Christian faiths at Lougachevitz (Czechoslovakia).

August, 1950—Russian, Georgian and Armenian Patriarchs sent their message from Tbiliss. A conference was held in Prague of the Bureau of the World Committee. * * *]

The Second All Union Conference was called in our country to discuss the Prague proposals and to prepare for the Second World Congress, at which close to 1,200 delegates gathered—ambassadors of all strata of population of our country and representatives of all the republics entering into our great Soviet Union.

* * * * * *

The conference elected a delegation from the Soviet Union to the Second World Congress of the partisans of peace opening in November, of which I was the only one from among ecclesiastical persons.

It had been planned to hold the congress in England, in the city of Sheffield, but, as is known, the majority of the delegates from the Soviet Union, including myself, were not given a visa by the English government.

At the press conference of the Soviet committee for the defense of peace, in the presence of representatives of the Soviet public, among several other delegates not admitted to England, I also appeared with a protest, published in our press.

[Article goes on and describes shifting of congress to Warsaw and goes into great detail as to receptions, flowers presented, meeting rooms, etc. Much space is given to account of personal triumph of Met. Nicholas * * *]

(p. 23)

As is known more than 2,000 persons, delegates and observers were present at the congress. There has hardly ever been anywhere or at any time a congress in which representatives of more than 80 countries of the world took part!

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Of ecclesiastical persons of all faiths (delegates and friends) there were 72; among them of the Orthodox—4, Catholic priests appoximately—22, Anglican—11, Protestant—31, Mussulmen—2 and various—2.

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[Article goes on to describe hearty reunion with Dr. Hewlett Johnson, etc. * * * One of the delegates Met. Nicholas specifically talked with was the Anglican priest Evans, chairman of the Society for Anglo-Soviet Friendship. * * * Then goes into more long descriptions or personal triumph of Met. Nicholas.]

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All the delegates branded with shame the so-called socialistic government of England, having done everything possible to disrupt the Second World Congress of the partisans of peace. * * *

The slanderous appearance of the American delegate Rogge, who tried to disrupt the unity of the congress, rang as a miserable false note in this atmosphere. Revealed as being a paid agent of the Tito clique he remained in complete isolation. As from a leper all the members of the American delegation turned away from him.

On the tribunal there succeeded each other the greatest scientists and workmen, priests and world renowned writers, conservatives and communists, people of all races, nationalities, not only of the most different social positions, but also of different political convictions, religious faiths. * * *

METROPOLITAN NICHOLAS.

No. 12, December, 1950

(pp. 12-14)

Speech at the Second World Congress of the Partisans of Peace

* * * * * *

But not only the instinct of self-preservation, not fear in the face of a new catastrophe was the moving force of these people in their desire to defend the matter of peace. No, we all know, that their main stimulus was and is an aspiration of the highest moral order, an aspiration to prevent the mass crime which is any new aggression, bearing with it not only the destruction of the warring armies, but of masses of the peaceful population, an example of which is the Korea of the present day.

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The unseen range of the movement for peace forces the instigators of a new war to worry; the worry changes to fear, and fear into the passion of self-defense, which has brought into movement the entire refinement of cruelty and many-sided apparatus of aggression in their hands. But there is no longer any force in the world which could hold back this unheard-of power, it is already physically impossible to apply force to hundreds of millions of people, welded together by one will! While at the same time every act of aggression against the partisans of peace on the part of the instigators of war, losing their minds and the ground under their feet, evokes new jolts, new explosions, new waves of protest, strengthens still more the wall of opposition to the criminals.

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Who are these people, who have already lifted their criminal sword over the head of all humanity and are ready to take away from people their greatest good—peace, that first and essential condition of life and progress?

They are—a numerically insignificant group of persons, worshippers of the golden calf, they are madmen. They dare to drag the entire world, including their own peoples,

into tragedy unseen in history and to drown it in oceans of blood and tears.

* * * * * *

Appearing here before you, I speak not only as a citizen of my peace-loving Soviet power—I speak here as a bishop of the Russian Orthodox Church and in her name, with an awareness of the responsibility, lying upon me for every word spoken, to my professed God, the Orthodox Church and history, and, as such, I want to be heard first of all by those who consider themselves christians, not in words, but in deeds.

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Dear friends of peace! Is it possible to listen calmly to the eyewitness accounts of that which is happening in Korea, of the hangings, the executions, the dreadful tortures applied not only to prisoners, but even to the peaceful population—to children, old people, women, the sick; of the thousands of bombs dropped on hospitals, orphanages, schools, of the flaming lava pouring from planes and burning cities, villages, farm lands, people? Is it possible to hear and read without shuddering, pity and compassion for the incredible sufferings of a small peace-loving people, of that hell into which a country of the most ancient culture and kindest nature has been committed?

And is it possible for everyone in whom there has not yet died the last spark of conscience—not to mention the christian, called upon not only to live in peace with his neighbor, but even to love him—to be indifferent to such speeches as the one made recently by rector Pence of a university in the State of Florida in America and which has already been quoted twice by those speaking at our congress (let these words stab our hearts a third time): "I approve bacteriological war, the use of gas, atom and hydrogen bombs and intercontinental rockets. I should not ask for a merciful attitude toward hospitals, churches, educational institutions or any groups of population whatsoever. * * *"

When one ponders on the statements of Pence and others like him, involutarily one asks: "Is it possible that each of them had a mother and a childhood? Is it possible that they have a wife, children, sisters, brothers, friends?" Why the most ferocious, the most savage animal, sated, no longer kills. Truly measureless can be the depth of human fall! This bunch of warmongers have turned into Bedlam where the basic, essential, fundamental human conceptions are not only twisted, but have acquired a directly opposite meaning, where murder is elevated to virtue, and the desire for peace is called a crime.

What do we see in the midst of the torch-bearers of a new conflagration of war?

Shudders and whispers as to some phosphorescent rockets, streaking the night sky across the ocean, mysterious noises and smells and no less mysterious submarines "of Soviet origin" along American shores, gloomy forebodings of countless fortunetellers, astrologers and "clairvoyants", spiritual seances * * *.

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(Pg. 14)

The Russian Orthodox Church is full of deep joy, finding the widest accord among the faithful and the leaders of other Christian churches. Hand in hand in the worthy struggle for peace, together with the well known theologian, revered by all of us, the Catholic Abbot Boule, there march the equally revered dean of the Canterbury Cathedral, Dr. Hewlett Johnson, and the professor of the Cambridge Theological Seminary in America, the priest of the Episcopal Church, Joseph Fletcher. It is comforting to know and see, how the appearances in defense of peace of faithful Catholics and Catholic priests and bishops of Poland, Czechoslovakia, Hungary, France, Belgium, Italy, the countries of Latin America, appearances that even bring upon them censure on the part of the Vatican, widely answer the protests against the defenders of war on the part of numerous representatives of the Protestant world: Evangelical-

Lutheran, Evangelical-Reformed and other Christian churches.

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(Pg. 15)

And how can the christian conscience reconcile itself with the oppression of colonial peoples or with racial discrimination against negroes?

Can the conscience of a Christian not be indignant and not protest seeing how, for the sake of criminal prepáration for a new world butchery, there is going on in certain countries a mad race for rearmament and wartime budgets are established for that purpose?

. . . . . .

Wóe to the instigators of war, if they should in the passion and blindness of the insane push the world into the abyss of a new misfortune! The blood of humanity will fall upon their heads, and not only cannot they themselves escape retribution, but even their names will be remembered through the ages with more imprecation than the names of Cain and Judas.

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METROPOLITAN NICHOLAS

No. 12, December, 1950

Orthodoxy and the Fight for Peace

(pp. 30-34)

. . . . . .

The unification of hundreds of millions of honest people in all the corners of the terrestrial globe around the Stockholm Proclamation—is a serious warning to the instigators of war. The flag of peace raised over the earth by the soldiers of love-of-man and uniting about itself more and more new warriors for peace, throws into a passion the leaders of hatred of humanity, who have encompassed themselves about with pride as with a necklace—according to the

Psalmsinger—and clad themselves in violence as with a garment (Psalms, 72, 6). They persecute the partisans of peace, doom them to the grievous tortures of hunger, poverty and lawlessness.

But the slaves of the money bag, the worshippers of the golden calf, will never have sufficient strength to halt the powerful pressure of the will of the international movement for peace. * * *

* * * * * * *

Imperialism, feeling the insecurity of its humanity-hating position, tries to put forth against the champions of peace, love and truth, all the powers of hell. From the so-called "cold war" it moves to acts of direct aggression, endeavoring to intimidate freedom-loving and peace-loving nations with the venom of its poisoned tusks. And although the "sons of peace" are convinced that the "sons of opposition" will never be able to shadow their brilliant hopes for peace, nor wreck the great thing they have started, however, to underestimate the entire danger which threatens humanity as a result of the intensified fanning by the Anglo-American Attilas of a third world war, would be to play into the hands of the haters of humanity.

Therefore a state of inactivity does not become the holders and champions of the idea of peace. So as to restrain the kindlers of war and to pave the way to a joyous future, to the triumph of brotherhood and love among nations, to the reign of peace and safety, it is necessary to work, work and work! Everyone who has stepped into the ranks of the soldiers of love of humanity must remember that his peace-making activity does not cease with signing the Stockholm Proclamation, but only begins, that the problem of peace does not lose its urgency and demands the twofold application of all his strength for the struggle with contemporary aggressors.

* * * * * * *

God calls upon us for special zeal in the carrying out of the Holy gospels as to love and peace to be shown at the

present time, when a certain section of people, calling themselves christians, openly acts against the great testaments of Divine Revelation and threatens humanity with new unbearable sufferings.

We have in mind those Anglo-American kindlers of a third world war. These insane people, in the spiritual blindness of the eyes of their heart, men of pride and guile, have decided upon a satanic substitution of the humanity-loving Truth of God by the vain righteousness of egoism and, forgetting that such "righteousness" is an "abomination in the sight of God" (Luke, 16, 15), have begun to extol their pretended social virtues to the entire world, to praise the false purity of their ideas and reason, and maliciously abuse other nations, marking the humanity-hating principles of fascism.

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So as to be convinced of this, we can remember the statement recently published in the press of one of the American haters of humanity, Dr. Pence, rector of a university in the state of Florida. We should draw our Christian attention to this statement of this enemy of mankind if only so as to clarify in the light of God's Truth the entire depth of the moral fall of the instigators of war.

* * * While the preacher of the egoistic fascist righteousness, Dr. Pence, in opposition to God's Truth, recommends the establishment in human relations of "jungle law", the law of tusks, the "social" context of which comes to, primarily, the art of killing.

"Everyone must learn the art of killing"—Dr. Pence announces to the world, and developing the cannibalistic program, adds: "I do not think that the war (talking of a third world war, being prepared by Anglo-American fascists) must be limited to armies, military navies and military air forces or that there should be any limitations in regard to methods or weapons of destruction. I approve of bacteriological warfare, the use of gases, atomic and hydrogen bombs and intercontinental rockets. I should not ask for merciful treatment of hospitals, churches, educational

institutions or any groups of population whatsoever. It would be hyprocrisy—he states—to show mercy to any group whatever".

What is there to say about this cannibalistic program of Dr. Pence?

We live in a government full of religious freedom, in a country where, alongside with those believing in God, there are not a few citizens, denying religion. But have we ever heard from anyone, ever or anything of the kind in our country? Never and from no one! Is it not our country that marches in the forefront of the fighters for peace? Is it not she, in fact, who is the bulwark of peace in the world?—115,275,940 Soviet citizens signing the Stockholm Proclamation of the Permanent committee of the World congress of the partisans of peace—there is the convincing proof of the fact that peace is dear to us in our country, to all without exception: the young and the old, the Russian and the Tadjik, the Ukrainian and the White Russian, the Georgian and the Uzbek, the faithful and the unbeliever.

It is not thus in America * * * Of what Christian culture can one speak, listening to the cannibalistic statements of Dr. Pence? It is not Christian, this satanic culture, a culture of sharpened knives against one's nearest, the culture of the rule of ferocious exploiters, a culture which offers to the Christian world not a Christian ladder of the worker for good, climbing up which the confessor of Christ can reach the kingdom of Absolute Love and Truth, but a ladder of dead bodies, erected by a criminal will and by the hands of anti-Christian ravishers and murderers.

The humanity-hating gospel of Dr. Pence who, it should be noted, is far from alone in his fascistic arguments anent mass human self-destruction, bears upon it the clear imprint of the equally humanity-hating "philosophy" of the Nietzscheistic Zarathustra, inviting (according to Nietzsche) people of unbridled will to a bloody banquet of the destruction of people in the name of the triumph of the "super-man". It is directly to this philosophy that fascism is obligated for its birth, developing the teaching of the

"superman" into the teaching of superior races, of their world domination over all other races. The Nietzscheistic so-called cultural-ethical ideal, calling on people for self-destruction, first received practical realization on the verge of the 20th century, when the German kaiser gave his troops, on their way to Asia, the order to mercilessly exterminate the Chinese. In the days of the Second World War this idea was carried out by the madman Hitler. Presently it is the delirium of Anglo-American fascists, executing the peaceful population of Korea.

Dr. Pence is far from original in his humanity-hating expressions. The Englishman Cool, preaching the theory of the rule of great nations over small; the American Mumford, proving that "war is necessary, as a periodic organized destruction of the products of human toil", and proclaining war as "the eternal mover of history"; their cothinker the American Freeman, who calls workers "the parasitic class" and calls for their mass destruction; the Maltese Fogt, proclaiming the necessity of the annihilation of people; Arthur Case, blessing war as a "cleansing knife", with whose aid "humanity will cleanse itself of the valueless" and "will become healthy"; the Frenchman Sartre, calling the workmen of France "a stupid inert mass"—all this is the clang of the one and the same chain, the same "humanity-hating delirium, precursor of fascism—Nietzsche newly risen in the world and made use of at the need of American imperialism, becoming fascist".*

The bloody drama of the heroic Korean people, thrown into the abyss of the greatest sufferings by the treachery of the betrayer of his country, Li San Man, and the insolence of the American intervenors—is a living confirmation of the testing of the Nietzsche ideal in life. From a religious point of view the destruction of Korean cities and towns and the mass annihilation of the peaceful population of Korea by American bombardiers cannot be qualified other-

* "Questions of Philosophy", 1949, No. 3.

wise than as a satanic violation of the humanity-loving laws of Christianity.

• • • • • •

Not the atomic bombs of the parasitic exploiters will dictate to toiling humanity, responding to the interests of the workers, the structure of life, but the will of the people themselves, understanding perfectly the humanity-hating nature of imperialism and turning their face away from it more and more each day.

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A. Shishkin.

No. 12, December, 1950

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1948-1950

Edition of the Moscow Patriarchy, 1950.

(p. 60)

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When it was clearly ascertained that the [spear] point of the aggressor was directed against the outpost of leading and progressive mankind—the USSR, concrete problems of the struggle for peace appeared in epistles and addresses: "The Church blesses and will bless the defense of our Fatherland, for she looks upon this defense as a holy duty, as the highest expression of love for the Homeland. • • •"

The peaceful constructive work of simple people brings the richest fruit. Documents make concrete—at the First World Conference of the partisans of peace—the problems of the Church to "tear off the masks of hypocrisy and sanctimony from the face of the international highwaymer; • • • we must condemn before the entire world the criminal schemes of the dark forces of world reaction".

Standing at the head of these forces "capitalistic America is a towering fornicatrix of the reborn Babylon, having established a world market-place, tries to tempt the nations, pushing them to war". Nor do the "democrats" fall behind America, from whose camp [the democrats] breathes the smell of burning conflagrations, the stench of decomposing cadavers and the fear of a trapped criminal". The Russian Orthodox Church with all resolution "openly and in the hearing of all * * * states that the worthy, sincerely humane purposes of the Soviet Government, directed toward the happiness of the workers, and brotherly love, are wholly supported by the Russian Orthodox Church". (pp. 61-62)

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When the American intervention began in Korea, the Russian Orthodox Church announced that she "cannot remain indifferent to the sufferings of the Korean people and raises her voice in the defense of truth".

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PROF. N. DOCTOUSOV.